CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 25, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original	Print
Proceedings before United States Board of Tax Appeals	1	1
Docket entries, No. 52949	1	1
Docket entries, No. 57568	4	3
Docket entries, No. 59919	7	5
Petition, No. 52949	10	7
Exhibit "A"—Notice of deficiency	25	16
Answer, No. 52949	31	20
Petition, No. 57568	33	21
Exhibit "A"—Notice of deficiency	43	27
Answer, No. 57568	48	30
Petition, No. 59919	50	31
Exhibit "A"—Notice of deficiency	63	39
Exhibit "B"—Trust deed, March 12, 1913	65	40
Answer, No. 59919	92	57
Memorandum opinion, Seawell, M.	95	58
Decision, No. 52949	106	66
Decision, No. 57568	107	66
Decision, No. 59919	108	67

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 31, 1935.

—7064-C

Proceedings before United States Board of Tax Appeals—Continued.

	Original	Print
Petition for review and assignments of error	109	67
Notice of filing petition for review	119	73
Statement of evidence	120	74
Caption	120	74
Exhibit 3—Stipulation as to consolidation, hearing, etc.	122	75
Testimony of John P. Wilson	130	79
Exhibit 2—Amendment to trust instrument, April 25, 1928	133	82
Testimony of Lloyd A. Waugh	140	86
Exhibits 4 to 9—Returns of United States Trust Co., 1924	164	102
Exhibits 10 to 15—Returns of United States Trust Co., 1925	173	108
Exhibits 16 to 21—Returns of United States Trust Co., 1926	184	115
Exhibits 22 to 27—Returns of United States Trust Co., 1927	195	122
Exhibits 28 to 33—Returns of United States Trust Co., 1928	206	130
Exhibits 34 to 39—Returns of United States Trust Co., 1929	217	137
Exhibits 40 and 41—Copies of ledger accounts for trust, 1917-1918	227	144
Exhibits 42 to 44—Copies of ledger accounts for trust, 1912-1919	230	147
Exhibits 45 to 47—Copies of ledger accounts for trust, 1923-1924	237	154
Exhibits 48 and 49—Copies of ledger accounts for Trust, 1928-1929	243	160
Exhibits 50 to 53—Copies of ledger accounts for trust, 1928-1929	249	166
Exhibits 54 and 55—Reports to beneficiaries under trust, July, 1924, and February, 1929	260	178
Exhibit 56—Letter, John P. Wilson, Jr., to Trust Co., December 28, 1922	266	183
Order approving statement of evidence	267	184
Præcipe for record	268	184
Clerk's certificate (omitted in printing)	271	
Proceedings in U. S. C. C. A., Second Circuit	272	187
Opinion, Manton, J.	272	187
Decree	276	193
Petition for rehearing (omitted in printing)	278	
Orders denying petition for rehearing	304	194
Clerk's certificate	307	195
Order allowing certiorari	308	197

[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 52949.

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

APPEARANCES:

For Taxpayer: John P. Wilson, Esq., Clay Judson, Esq.
For Comm'r.: F. R. Shearer, Esq.

DOCKET ENTRIES

1931.

Feb. 17. Petition received and filed. Taxpayer notified. (Fee paid.)
" 18. Copy of petition served on General Counsel.
Apr. 18. Answer filed by General Counsel.
" 23. Copy of answer served on taxpayer. General Calendar.

1932.

Aug. 9. Hearing set for week of Oct. 5, 1932.
Oct. 5-6. Hearing had before Mr. Seawell, Div. 4 on merits. Consolidated with dockets 59919 and 57568. Stipulation of facts filed. Petitioner's brief due Nov. 15, 1932—reply Dec. 24, 1932. Commissioner's brief due Dec. 10, 1932.
[fol. 2] Oct. 21. Transcript of hearing of Oct. 5 and 6, 1932, filed.
Nov. 14. Brief filed by taxpayer. 11/14/32, copy served.
Dec. 7. Motion filed by General Counsel for extension to Jan. 10, 1933, to file brief and petitioner be allowed to Jan. 24, 1933, for reply. Granted.

1933.

Jan. 10. Brief filed by General Counsel.
" 23. Reply brief filed by taxpayer. 1/24/33, copy served.

1933.

Nov. 15. Memorandum Opinion rendered, Mr. Seawell, Div. 4. Order will be entered of no deficiency or overpayment.

" 16. Decision entered, Logan Morris, Div. 14.

1934.

Feb. 9. Petition for review by U. S. Circuit Court of Appeals (2) with assignments of error, filed by General Counsel.

" 17. Proof of service filed by General Counsel.

" 21. Proof of service filed by General Counsel. (Attorney.)

Apr. 2. Motion for extension to May 10, 1934, to complete and transmit record filed by General Counsel.

" 2. Order enlarging time to May 10, 1934, for preparation of evidence and delivery of record entered.

[fol. 3] May 4. Motion for extension to June 10, 1934, to complete and transmit record filed by General Counsel.

" 4. Order enlarging time to June 11, 1934, for preparation of evidence and delivery of record entered.

June 1. Motion for extension to Aug. 11, 1934, for preparation of evidence filed by General Counsel.

" 1. Order enlarging time to August 11, 1934, for preparation of evidence and delivery of record entered.

" 26. Statement of evidence lodged.

July 20. Notice of the lodgment of statement of evidence with hearing notice 7/11/34 filed.

" 20. Præcipe filed—proof of service thereon.

" 20. Hearing date changed to 8/1/34.

Aug. 1. Hearing had before Mr. Van Fossan (Seawell), on approval of statement of evidence—no objections filed. Referred to Mr. Van Fossan for approval.

" 2. Statement of evidence approved and ordered filed.

" 11. Order enlarging time to Oct. 1, 1934, for transmission and delivery of record entered.

[fol. 4] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 57568

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

APPEARANCES:

For Taxpayer: John P. Wilson, Esq., Clay Judson, Esq.
For Comm'r.: F. R. Shearer, Esq., E. M. Woolf, Esq.

DOCKET ENTRIES

1931.

May. 1. Petition received and filed. Taxpayer notified. (Fee not paid.)
" 26. Order to show cause on or before June 24, 1931, entered. (Fee case.)
June 5. Fee paid (check).
" 8. Copy of petition served on General Counsel.
July 6. Answer filed by General Counsel.
" 25. Copy of answer served on taxpayer, General Calendar.

1932.

Aug. 12. Hearing set Oct. 5, 1932.
[fol. 5] Oct. 5-6. Hearing had before Mr. Seawell on merits. Consolidated with dockets 59919 and 52949. Petitioner's brief due 11/15/32—reply 12/24/32. Respondent's brief due 12/10/32.
" 21. Transcript of hearing of Oct. 5 and 6, 1932, filed.
Nov. 14. Brief filed by taxpayer. 11/14/32, copy served.
Dec. 7. Motion for extension to Jan. 10, 1933, to file General Counsel's brief and Jan. 24, 1933, for petitioner's reply brief filed by General Counsel and granted.

1933.

Jan. 10. Brief filed by General Counsel.
" 23. Reply brief filed by taxpayer. 1/24/33, copy served.

1933.

Nov. 15. Memorandum opinion rendered, Mr. Seawell, Div. 4. Order will be entered of no deficiency or overpayment.

" 16. Decision entered, Logan Morris, Div. 14.

1934.

Feb. 9. Petition for review by U. S. Circuit Court of Appeals (2) with assignments of error filed by General Counsel.

" 17. Proof of service filed by General Counsel.

" 21. Proof of service filed by General Counsel. (Attorney.)

[fol. 6] Apr. 2. Motion for extension to 5/10/34 to complete record filed by General Counsel.

" 2. Order enlarging time to May 10, 1934, for preparation of evidence and delivery of record entered.

May 4. Motion for extension to June 10, 1934, to complete and transmit record filed by General Counsel.

" 4. Order enlarging time to June 11, 1934, for preparation of evidence and delivery of record entered.

June 1. Motion for extension to Aug. 11, 1934, to complete and transmit record filed by General Counsel.

" 1. Order enlarging time to Aug. 11, 1934, for preparation of evidence and delivery of record entered.

" 26. Statement of evidence lodged.

July 20. Notice of lodgment of statement with hearing notice of 7/11/34 filed.

" 20. Præcipe filed—proof of service thereon.

" 20. Notice of change of hearing to August 1, 1934, filed.

Aug. 1. Hearing had before Mr. Van Fossan (Seawell) on approval of statement of evidence—no objections filed—referred to Mr. Van Fossan for approval.

" 2. Statement of evidence approved and ordered filed.

" 11. Order enlarging time to Oct. 1, 1934, for transmission and delivery of record entered.

[fol. 7] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 59919

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson (John P. Wilson, Sr., Trust), Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

APPEARANCES:

For Taxpayer: John P. Wilson, Esq., Clay Judson, Esq.
For Comm'r.: E. M. Woolf, Esq.

DOCKET ENTRIES

1931.

Sept. 12. Petition received and filed. Taxpayer notified. (Fee paid.)
" 12. Copy of Petition served on General Counsel.
Nov. 9. Answer filed by General Counsel.
" 11. Copy of answer served on taxpayer. Assigned to General Calendar.

1932.

Aug. 13. Hearing set Oct. 5, 1932.
[fol. 8] Oct. 5-6. Hearing had before Mr. Seawall on merits. Submitted. Consolidated with dockets 57568 and 52949. Stipulation of facts filed. Petitioner's brief due Nov. 15, 1932—reply Dec. 24, 1932. Respondent's brief due Dec. 10, 1932.
" 21. Transcript of hearing of Oct. 5 and 6, 1932, filed.
Nov. 14. Brief filed by taxpayer. 11/14/32, copy served.
Dec. 7. Motion for extension to Jan. 10, 1933, to file General Counsel's brief and petitioner's reply to 1/24/33 filed by General Counsel and granted.

1933.

Jan. 10. Brief filed by General Counsel.
" 23. Reply brief filed by taxpayer. 1/24/33, copy served.

1933.

Nov. 15. Memorandum opinion rendered, Mr. Seawell, Div. 4. Order will be entered of no deficiency or overpayment.

" 16. Decision entered, Logan Morris, Div. 14.

1934.

Feb. 9. Petition for review by U. S. Circuit Court of Appeals (2) with assignments of error filed by General Counsel.

" 17. Proof of service filed by General Counsel.

" 21. Proof of service filed by General Counsel. (Attorneys.)

[fol. 9] Apr. 2. Motion for extension to May 10, 1934, to complete and transmit record filed by General Counsel.

" 2. Order enlarging time to May 10, 1934, for preparation of evidence and delivery of record entered.

May 4. Record for extension to June 10, 1934, to complete and transmit record filed by General Counsel.

" 4. Order enlarging time to June 11, 1934, for preparation of evidence and delivery of record entered.

June 1. Motion for extension to Aug. 11, 1934, to complete and transmit record filed by General Counsel.

" 1. Order enlarging time to Aug. 1, 1934, for preparation of evidence and delivery of record entered.

" 26. Statement of evidence lodged.

July 20. Notice of the lodgment of statement of evidence with hearing notice 7/11/34 filed.

" 20. Præcipe filed—proof of service thereon.

" 20. Notice of change of hearing to August 1, 1934, filed.

Aug. 1. Hearing had before Mr. Van Fossan (Seawell) on approval of statement of evidence—no objections filed—referred to Mr. Van Fossan for approval.

[fol. 10] Aug. 2. Statement of evidence approved and ordered filed.

" 11. Order enlarging time to Oct. 1, 1934, for transmission and delivery of record entered.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION, No. 52949

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, dated December 20, 1930. The said notice of deficiency contains no Bureau symbols or other identifying initials. Attached to said notice of deficiency, however, is a statement bearing the symbols IT:AR:D-1 RMT-60D. As a basis of its proceeding the petitioner alleges as follows:

1. The petitioner is a corporation organized under the [fol. 11] laws of the State of New York having its principal office at 45 Wall Street, New York City. Petitioner is also a fiduciary in this case as trustee of the three separate trust estates known as the Martha Wilson Trust, Anna W. Dickinson Trust, and the John P. Wilson, Jr. Trust, but designated in the deficiency letter as "Trustees (sic) under the Deed of Trust of John P. Wilson." The petitioner was acting as trustee of said three separate trust estates throughout the years 1924, 1925, and 1926, pursuant to the provisions of the trust agreement of March 12, 1913, between John P. Wilson and the United States Trust Company of New York, as amended first on the 21st day of September, A. D. 1918, as amended second on the 19th day of June, A. D. 1919, and as last amended on the 1st day of December, A. D. 1920, each of said amendments being made pursuant to the power of amendment reserved in the original instrument and by the amendments made from time to time.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on December 20, 1930.

3. The taxes in controversy are income taxes for the calendar years 1924, 1925 and 1926. The amount of the taxes in controversy is $52,549.86.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in [fol. 12] finding that the action of the "Trustees" (sic) in filing separate returns for the Martha Wilson Trust, Anna W. Dickinson Trust and the John P. Wilson, Jr. Trust was improper, and in holding that the income report on said three separate trusts should have been included in each of the years in question on a single return, showing the undistributed income as taxable to these three trusts considered as a single trust.

(b) The assessment of an additional tax pursuant to said notice of deficiency is barred by the statute of limitations. No waiver of the statute has ever been filed by the United States Trust Company of New York "as Trustee (or Trustees) under Deed of Trust of John P. Wilson."

(c) Even if the Commissioner of Internal Revenue is right in his contention that there is only one trust in this case, he neverthless has erred in failing to allow the petitioner credit for the taxes paid in each of the three years in question as trustee of each of the three separate trust estates, namely, the Martha Wilson Trust, Anna W. Dickinson Trust, and the John P. Wilson, Jr. Trust. In any case the same income is involved, and the tax has already been paid on that income. If the income of the separate trusts ought to be combined and not reported separately, as the Commissioner contends and as the petitioner denies, then since it is in any case the same income the Commissioner of Internal Revenue must allow full credit for all taxes paid in 1924, 1925 and 1926 by the United States Trust Company of New York in its capacity as Trustee of each of said separate trust estates.

[fol. 13] (d) The Commissioner of Internal Revenue erred in finding that the petitioner had a net income subject to surtax in the year 1924 in the sum of $118,726.95.

(e) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1924 in the sum of $23,948.97.

(f) The Commissioner of Internal Revenue erred in finding that the petitioner had a net income subject to surtax in the year 1925 in the sum of $106,432.23.

(g) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1925 in the sum of $12,946.44.

(h) The Commissioner of Internal Revenue erred in finding that the petitioner had a net income subject to surtax in the year 1926 in the sum of $119,972.27.

(i) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1926 in the sum of $15,654.45.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The instrument under which the United States Trust Company of New York acted as trustee in so far as the in-
[fol. 14] come sought to be taxed against this petitioner is concerned provided for three separate and distinct trusts, to be known respectively as the Martha Wilson Trust, the Anna W. Dickinson Trust and the John P. Wilson, Jr. Trust. On March 12, 1913, John P. Wilson (the father of John P. Wilson, Jr.) set up a trust with the United States Trust Company of New York as trustee for the benefit of his three children, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr. The trust deed contained the following prosision:

"Any of the provisions of this trust deed may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them and delivered to the Trustee, provided, however, that such instrument must be approved in writing by the said party of the first part if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

The three beneficiaries named were as above stated the three children of John P. Wilson, namely, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr.

On the 21st day of September, A. D. 1918, by an instrument duly executed by said Martha Wilson, Anna W. Dick-
[fol. 15] inson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the trustee, the said trust deed of March 12, 1913, was duly amended by provisions reading in part as follows:

"First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one-third of said trust estate and the income thereof, except as may be otherwise specifically provided herein."

On the 19th day of June, A. D. 1919, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the trustee, the said trust deed as theretofore amended was again amended by provisions reading in part as follows:

"First.—Distribution of Income

"One-half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one-half [fol. 16] (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz.: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come in the hands of the said Trustee.

"In the event of the death of John P. Wilson, Jr., his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson, her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

"In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said trust indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife [fol. 17] or husband of such deceased beneficiary, and to and for charitable uses and purposes, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving from time to time, of the said grantor, John P. Wilson, per stirpes.

"Second.—Distribution of the Principal of the Trust Estate

"Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

"The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the issue of said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in such shares and interests, and subject to such trusts as may be directed by the last will and testament of each deceased beneficiary; and in default of any such direction or appointment, then to [fol. 18] the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes."

On December 1, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the trustee, said trust deed as theretofore amended was again amended in part as follows:

"By striking out the first paragraph of the amendment to said Deed of Trust bearing date the 19th day of June, A. D. 1919, which paragraph so stricken out reads as follows:

One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one-half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz.: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the [fol. 19] same shall come into the hands of the said Trustee.'

and substituting in lieu thereof, with like effect as though it had been originally contained in said amendment, the following paragraph, viz.:

'The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

'So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as

shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. [fol. 20] Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustee shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.' "

(b) It is apparently the contention of the Commissioner of Internal Revenue that the United States Trust Company of New York, as trustee (or trustees) under deed of trust of John P. Wilson, is an entirely different entity from either the United States Trust Company of New York as trustee of the Martha Wilson Trust, or United States Trust Company of New York as trustee of the Anna W. Dickinson Trust, or United States Trust Company of New York as trustee of the John P. Wilson, Jr. Trust. At least such a contention is the only one which is consistent with the failure of the Commissioner of Internal Revenue to give the petitioner herein, namely the United States Trust Company of New York, as trustee (or trustees) under deed of trust of John P. Wilson, any credit for taxes paid by the United States Trust Company of New York as trustee of the Martha Wilson Trust, the United States Trust Company of New York as trustee of the Anna W. Dickinson trust, or United States Trust Company of New York as trustee of the John P. Wilson, Jr. Trust. The Commissioner of Internal Revenue holds no waiver of the statute of limitations executed by the United States Trust Company of New [fol. 21] York, as trustee (or trustees) under deed of trust of John P. Wilson, any waivers which may have been filed having been in the name of the United States Trust Company of New York as trustee of the Martha Wilson Trust, or United States Trust Company of New York as trustee of the Anna W. Dickinson Trust, or United States Trust Company of New York as trustee of the John P. Wilson, Jr. Trust. The period within which this additional assessment may be made has long since expired, since the returns covering the very income here in question for the years 1924 and 1925 were filed more than four (4) years prior to December 20, 1930, and the returns covering the

income here in question for the year 1926 were filed more than three (3) years prior to December 20, 1930. The Commissioner of Internal Revenue, having accepted the taxes paid by the United States Trust Company of New York as trustee of each of said separate trust estates on the very same income here in question, is now, long after the period when any claim for refund can be filed on behalf of those trusts, asserting for the first time that the United States Trust Company of New York as trustee under deed of trust of John P. Wilson owes and must pay all over again the tax at a higher rate on this identical income, without any credit whatsoever being given for the taxes already paid. The facts in this case present a perfect estoppel against the Commissioner of Internal Revenue.

In this connection attention is called to the fact that for many months the Commissioner of Internal Revenue contended that all of the income of all of these separate trusts, [fol. 22] whether distributed or not, should be taxed to the beneficiaries individually, and the Commissioner of Internal Revenue attempted to assess additional taxes against the individuals on that basis, at the same time offering to refund the taxes paid by the trustee. On December 22, 1930, the Commissioner of Internal Revenue advised Mr. John P. Wilson, Jr., the beneficiary of the John P. Wilson, Jr. Trust, that as a result of the conference which was held in Washington on January 9, 1930, relative to the adjustment of his income taxes for the years 1924, 1925 and 1926, "this office has now conceded your contention that you are taxable only on such amounts of income as were actually distributed to you from the various trusts of which you were a beneficiary, and accordingly the deficiencies proposed for the years in question will not be assessed."

The Commissioner of Internal Revenue never, prior to the sixty day deficiency letter, to obtain relief from which this petition is filed, indicated that he was contemplating taxing all three of these separate trusts as though they were one trust.

(c) The United States Trust Company of New York, as Trustee of the Martha Wilson Trust, as Trustee of the Anna W. Dickinson Trust, and as Trustee of the John P. Wilson, Jr. Trust, paid taxes for the years 1924, 1925, 1926,

for those trusts respectively, as shown in the following table:

[fol. 23]	1924	1925	1926
Martha Wilson Trust	$1,984.84	$5,144.19	$5,575.98
Anna W. Dickinson Trust	1,984.84	5,144.15	5,573.36
John P. Wilson Jr. Trust	1,984.83	5,144.02	5,576.41

The income which the Commissioner of Internal Revenue is endeavoring to tax in the deficiency letter against which this petition is filed, is exactly the same income on which the United States Trust Company of New York paid the taxes as above listed in the taxable years 1924, 1925 and 1926. Nevertheless the Commissioner of Internal Revenue has not credited the petitioner with the payment of said taxes. In other words, the Commissioner of Internal Revenue accepted taxes from the United States Trust Company of New York as Trustee of the three separate trusts listed above for the years 1924, 1925 and 1926, and now after the statute of limitations has expired so that no claim for refund of said taxes can be filed, the Commissioner of Internal Revenue suddenly takes the position that they are not three separate trusts but only a single trust, and hence he tries to tax the same income all over again at a higher rate without giving any credit whatsoever for the taxes which were paid in good faith by this petitioner and accepted without question by the Commissioner of Internal Revenue.

Wherefore, the petitioner prays that this Board may [fol. 24] hear this case and determine that there is no tax due from the petitioner herein for the years 1924, 1925 and 1926.

John P. Wilson, Clay Judson, Attorneys for Petitioner. Wilson, McIlvaine, Hale & Templeton, of Counsel.

Duly sworn to by Williamson Pell. Jurat omitted in printing.

[fol. 25] EXHIBIT "A", ANNEXED TO FOREGOING PETITION

NP-2-26.

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Dec. 20, 1930.

United States Trust Company of New York, Trustees under Deed of Trust of John P. Wilson, 44 Wall Street, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the year(s) 1924, 1925 and 1926 discloses a deficiency of $52,549.86, as shown in the statement attached.

In accordance with section 274-of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest [fol. 26] charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by M. T. Sherwood, Deputy Commissioner.

Enclosures: Statement, Form 882, Form 870.

Statement

IT:AR:D-1. RMT-60D.

In re United States Trust Company of New York, Trustees under Deed of Trust of John P. Wilson, 44 Wall Street, New York, New York.

Tax Liability.

Years	Corrected tax liability	Tax previously assessed	Deficiency
1924	$23,948.97	None	$23,948.97
1925	12,946.44	None	12,946.44
1926	15,654.45	None	15,654.45
Totals	$52,549.86	None	$52,549.86

[fol. 27] This office holds that the action of the trustees in filing separate returns for each of the above-mentioned trusts was erroneous and that the income reported thereon should have been included in each year on a single return, form 1041 filed by the trustees of the trust created by John P. Wilson under deed of trust dated March 12, 1913, the distribution of the beneficiaries of the trust being shown thereon, and a form 1040, showing the undistributed income filed to reflect the income taxable to the trust as an entity.

In arriving at the above conclusion you are advised that despite the modification of the original trust agreement dated March 12, 1913, and as a result of which you have proceeded on the theory that three separate trusts were created, this office is of the opinion that there is nothing in the amendments to the trust which justifies the conclusion that by such amendments there were created three separate and distinct trusts in lieu of the one theretofore effective.

In view of the above, returns for the trust on forms 1041 and 1040 for the years 1924, 1925 and 1926 have been prepared under the provisions of section 3176 of the revised statute and the tax computed thereon as shown below:

[fol. 28] 1924

Net income originally reported		None
Add:		
1. Ordinary income from John P. Wilson Trust		$ 228.24
2. Dividends from John P. Wilson Trust		118,498.71
Total corrected income taxable to trust		$118,726.95
Corrected net income subject to surtax		$118,726.95
Less:		
Dividends	$118.498.71	
Personal exemption	1,000.00	119,498.71
Balance subject to normal tax		None
Surtax on $118,726.95		$23,948.97
Total tax assessable		$23,948.97
Tax previously assessed		None
Deficiency		$23,948.97

Explanation of Changes

Undistributed income from the trust of John P. Wilson taxable to the trust as an entity has been included as income as explained above.

[fol. 29] 1925

Net income originally reported		None
Add:		
1. Ordinary income from John P. Wilson Trust		$325.17
2. Dividends from John P. Wilson Trust		106,107.06
Corrected net income subject to surtax		$106,432.23
Less:		
Dividends	$106,107.06	
Personal exemption	1,500.00	107,607.06
Balance subject to normal tax		None
Surtax on $106,432.23		$12,946.44
Total tax liability		$12,946.44
Tax previously assessed		None
Deficiency		$12,946.44

Explanation of Changes

1 and 2. Same as for the year 1924.

1926

Net income originally reported		None
Add:		
1. Ordinary income from John P. Wilson Trust		$1,154.79
2. Dividends from John P. Wilson Trust		118,817.48

[fol. 30] A review of the reports of the internal revenue agent in charge at New York, New York, covering tax liability of the trusts of Anna W. Dickinson, Martha Wilson and John Wilson, discloses the same to be correct as submitted with the following exceptions:

Corrected net income subject to surtax		$119,972.27
Less:		
Dividends	$118,817.48	
Personal exemption	1,500.00	120,317.48
Balance subject to normal tax		None
Surtax on $119,972.27		$15,654.45
Total tax liability		$15,654.45
Tax previously assessed		None
Deficiency		$15,654.45

Explanation of Changes

1 and 2. Same as for the year 1924.

Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him.

[fol. 31] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER, No. 52949

The respondent, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer filed February 17, 1931, admits and denies as follows:

1. Respondent admits that the United States Trust Company of New York is a corporation organized under the laws of the State of New York having its principal office at 45 Wall Street, New York City. Respondent further admits that the United States Trust Company of New York is the fiduciary in this case as Trustee, designated in the deficiency letter as "Trustees under the Deed of Trust of John P. Wilson", and denies the remainder of the matter set forth in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph No. 2 of the petition.

3. Admits the allegations contained in paragraph No. 3 of the petition.

[fol. 32] 4. Denies that the respondent erred in determining or computing petitioner's tax liability for the years 1924, 1925 and 1926, as alleged in subparagraphs (a) to (i), inclusive, of paragraph No. 4 of the petition.

5. (a) Denies the allegations contained in subparagraph (a) of paragraph No. 5 of the petition.

(b) The respondent neither admits nor denies the matter set forth in subparagraph (b) of paragraph No. 5 of the petition, but demands strict proof thereof, except in so far as this paragraph relates to the statute of limitations, which matter the respondent denies.

(c) Denies the allegations contained in subparagraph (c) of paragraph No. 5 of the petition.

6. Denies generally and specifically each and every allegation not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: Bruce A. Low, Special Attorney, Bureau of Internal Revenue.

[fol. 33] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION, No. 57568

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated March 7, 1931. The said Notice of Deficiency contains no Bureau symbols or other identifying initials. Attached to said Notice of Deficiency, however, is a statement bearing the symbols IT:AR:D-1. RMT-60D. As a basis of its proceeding the petitioner alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of New York having its principal office at 45 Wall Street, New York City. Petitioner is also a fiduciary in this case as Trustee of the three separate trust estates known as the Martha Wilson Trust, Anna W. Dickinson Trust, and the John P. Wilson, Jr., Trust, but designated in the deficiency letter as "Trustee under the Deed of Trust of John P. Wilson." The petitioner was acting [fol. 34] as Trustee of said three separate trust estates throughout the years 1927 and 1928, pursuant to the provisions of the trust agreement of March 12, 1913, between John P. Wilson and the United States Trust Company of New York, as amended first on the 21st day of September, A. D. 1918, as amended second on the 19th day of June, A. D. 1919, and as last amended on the first day of December, A. D. 1920, each of said amendments being made pursuant to the power of amendment reserved in the original instrument and by the amendments made from time to time.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on March 7, 1931.

3. The taxes in controversy are income taxes for the calendar years 1927 and 1928. The amount of the taxes in controversy is $73,139.02.

4. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in finding that the action of the "Trustees" (sic) in filing separate returns for the Martha Wilson Trust, Anna W. Dickinson Trust and the John P. Wilson, Jr., Trust was improper, and in holding that the income reported on said three separate trusts should have been included in each of the years in question on a single return, showing the undistributed income as taxable to these three trusts considered as a single trust.

[fol. 35] (b) The Commissioner of Internal Revenue erred in finding that the petitioner had a net income subject to surtax in the year 1927 in the sum of $183,769.52.

(c) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1927 in the sum of $29,078.25.

(d) The Commissioner of Internal Revenue erred in finding that the petitioner had a net income subject to surtax in the year 1928 in the sum of $169,867.10.

(e) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1928 in the sum of $44,060.77.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

The instrument under which the United States Trust Company of New York acted as Trustee insofar as the income sought to be taxed against this petitioner is concerned provided for three separate and distinct trusts, to be known respectively as the Martha Wilson Trust, the Anna W. Dickinson Trust and the John P. Wilson, Jr., Trust (copy of which instrument is hereto attached marked Exhibit "B"). On March 12, 1913, John P. Wilson (the father of John P. Wilson, Jr.) set up a trust with the United States Trust Company of New York as Trustee for the benefit of his three children, Martha Wilson, Anna W.

[fol. 36] Dickinson and John P. Wilson, Jr. The trust deed contained the following provision:

"Any of the provisions of this trust deed may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them and delivered to the Trustee, provided, however, that such instrument must be approved in writing by the said party of the first part if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

The three beneficiaries named were as above stated the three children of John P. Wilson, namely, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr.

On the 21st day of September, A. D. 1918, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, the said trust deed of March 12, 1913, was duly amended by provisions reading in part as follows:

"First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the [fol. 37] whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein."

On the 19th day of June A. D. 1919, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, the said trust deed as theretofore amended was again amended by provisions reading in part as follows:

"First—Distribution of Income

"One-half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one-half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz: Martha [fol. 38] Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come in the hands of the said Trustee.

"In the event of the death of John P. Wilson, Jr., his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson, her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

"In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said trust indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from [fol. 39] time to time, of the said grantor, John P. Wilson, per stirpes.

"Second. Distribution of the Principal of the Trust Estate

"Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

"The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the issue of said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in such shares and interests, and subject to such trusts as may be directed by the last will and testament of each deceased beneficiary; and in default of such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes."

On December 1, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wil- [fol. 40] son, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, said trust deed as theretofore amended was again amended in part as follows:

"By striking out the first paragraph of the amendment to said Deed of Trust bearing date the 19th day of June, A. D. 1919, which paragraph so stricken out reads as follows:

'One half (½) of the net income of each of the Three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and the net

income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the Trustee.'

and substituting in lieu thereof, with like effect as though it had been originally contained in said amendment, the following paragraph, viz:

'The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the [fol. 41] beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable

'So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and from a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustee shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.' ''

[fol. 42] Under the terms of the trust agreement as amended, copy of which has been attached hereto as Exhibit "B", and the material provisions of which have been quoted above, the petitioner in this case is clearly shown to have been the Trustee of three separate and distinct trusts. As such Trustee it duly reported the income accumulated in said separate trusts and paid the tax due thereon. This has been admitted by the Commissioner of Internal Rev-

enue. Having accounted for and paid the proper tax upon these separate trusts, the Trustee cannot now be taxed as the Trustee of a hypothetical, non-existent trust which combines the income of all of said separate trusts.

Wherefore, the petitioner prays that this Board may hear this case and determine that there is no tax due from the petitioner herein for the years 1927 and 1928.

John P. Wilson, Clay Judson, Attorneys for Petitioner. Wilson, McIlvaine, Hale & Templeton, of Counsel, 140 South Dearborn Street, Chicago, Illinois.

Duly sworn to by Williamson Pell. Jurat omitted in printing.

[fol. 43] EXHIBIT "A", ANNEXED TO FOREGOING PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Mar. 7, 1931.

United States Trust Company of New York, Trustee under deed of trust of John P. Wilson, 45 Wall Street, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the years 1927 and 1928 discloses a deficiency of $73,139.02 as shown in the statement attached.

In accordance with section 274 of the Revenue Act of [fol. 44] 1926 and section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not including Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability for the years in which a deficiency is disclosed.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:G:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency

and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement, Form 882, Form 870.

[fol. 45] Statement

IT:AR:D-1. RMT-60D.

In re United States Trust Company of New York Trustees under Deed of Trust of John P. Wilson, 45 Wall Street, New York, N. Y.

Tax Liability

Years	Tax liability	Tax assessed	Deficiency
1927	$29,078.25	None	$29,078.25
1928	44,060.77	None	44,060.77
Totals	$73,139.02	None	$73,139.02

A review of the returns for the years 1927 and 1928, covering the tax liability of the trusts of Anna W. Dickinson; Martha Wilson and John Wilson, discloses the same to be correct as submitted with the following exceptions:

This office holds that the action of the trustees in filing separate returns for each of the above-mentioned trusts was erroneous and that the income reported thereon should have been included in each year on a single return, form 1041, filed by the trustees of the trust created by John P. Wilson under deed of trust dated March 12, 1913, the distribution to the beneficiaries of the trust being shown thereon, and a form 1041, showing the undistributed income filed to reflect the income taxable to the trust as an entity.

In arriving at the above conclusion you are advised that despite the modification of the original trust agreement dated March 12, 1913, and as a result of which you have [fol. 46] proceeded on the theory that three separate trusts were created, this office is of the opinion that there is noth-

ing in the amendments to the trust which justifies the conclusion that by such amendments there were created three separate and distinct trusts in lieu of the one theretofore effective.

In view of the above, returns for the trust on forms 1041 and 1040 for the years 1927 and 1928 have been prepared under the provisions of section 3176 of the revised statute and the tax computed thereon as shown below:

1927

Net income originally reported		$ None
Add:		
(1) Dividends from John P. Wilson Trust		$183,769.52
Total corrected income taxable to trust		$183,769.52
Corrected net income subject to surtax		$183,769.52
Less:		
Dividends	$183,769.52	
Personal exemption	1,500.00	185,269.52
Balance subject to normal tax		None
Surtax on $183,769.52		$ 28,413.90
Capital net gain on $5,314.71 at 12½%		664.35
Total tax assessable		$ 29,070.25
Tax previously assessed		None
Deficiency		$ 29,078.25

[fol. 47] Explanation of Change

Undistributed income from the trust of John P. Wilson taxable to the trust as an entity has been included as income as explained above.

1928

Net income originally reported	None
Add:	
1. Capital net gain from John P. Wilson Trust	$147,418.83
2. Dividends from John P. Wilson Trust	169,867.10
Total corrected income	$317,285.93

Less:		
Capital net gain		147,418.83
Corrected net income subject to surtax		$169,867.10
Less:		
Dividends	$169,867.10	
Personal exemption	1,500.00	
		171,367.10
Balance subject to normal tax		None
Surtax on $169,867.10		$25,633.42
Tax at 12½% on capital net gain of $147,418.83		18,427.35
Total tax liability		$44,060.77
Tax previously assessed		None
Deficiency		44,060.77

[fol. 48] Explanation of Changes

1 and 2. Same as for the year 1927.

Due to the fact that the statute of limitations will presently bar an assessment of additional tax against you for the year — the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 and/or article 451 of Regulations 74 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

Before United States Board of Tax Appeals

[Title omitted]

Answer No. 57568

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Reve-
[fol. 49] nue, for answer to the petition filed in the above entitled appeal, admits and denies as follows:

1. Admits that the petitioner is a corporation organized under the laws of the State of New York having its prin-

cipal office at 45 Wall Street, New York City. Admits that the petitioner is Trustee under the Deed of Trust of John P. Wilson as alleged in paragraph 1 of the petition, but denies all other allegations contained in said paragraph.

2. Admits that a notice of deficiency was mailed to the petitioner on March 7, 1931. Denies that the copy attached to the petition and marked Exhibit "A" is a correct copy of the deficiency notice as alleged in that in the seventh line of paragraph 2 form 1041 is quoted whereas it should have been form 1040.

3. Admits the allegations contained in paragraph 3 of the petition.

4. Denies the allegations of error set forth in paragraph 4 of the petition, sub-paragraphs (a) to (e), inclusive.

5. Admits that on March 12, 1913, John P. Wilson set up a trust with the United States Trust Company of New York as Trustee for the benefit of his three children, Martha Wilson, Anna W. Dickinson and John P. Wilson Jr. Denies all other allegations of fact contained in paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

[fol. 50] Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: F. R. Shearer, Special Attorney, Bureau of Internal Revenue.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION, No. 59919

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated [fol. 51] August 17, 1931. The said notice of deficiency contains no Bureau symbols or other identifying initials.

Attached to said notice of deficiency, however, is a statement bearing the symbols IT:AR:A-2 GR-60D. As a basis of its proceeding the petitioner alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of New York having its principal office at 45 Wall Street, New York City. Petitioner is also a fiduciary in this case as Trustee of the three separate trust estates known as the Martha Wilson Trust, Anna W. Dickinson Trust, and the John P. Wilson, Jr. Trust. The petitioner was acting as Trustee of said three separate trust estates throughout the year 1929, pursuant to the provisions of the trust agreement of March 12, 1913, between John P. Wilson and the United States Trust Company of New York, as amended first on the 21st day of September, A. D. 1918, as amended second on the 19th day of June, A. D. 1919, and as last amended on the first day of December, A. D. 1920, each of said amendments being made pursuant to the power of amendment reserved in the original instrument and by the amendments made from time to time.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on August 17, 1931.

3. The taxes in controversy are income taxes for the calendar year 1929. The amount of the taxes in controversy is $41,637.34.

[fol. 52] 4. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in finding that the action of the Trustee in filing separate returns for the Martha Wilson Trust, Anna W. Dickinson Trust and the John P. Wilson, Jr. Trust was improper, and in holding that the income reported on said three separate trusts should have been included on a single return, showing the undistributed income as taxable to these three trusts considered as a single trust.

(b) The Commissioner of Internal Revenue erred in finding that the charitable contribution made by said three separate trust estates in the sum of $8,333.33 each to Williams College, Williamstown, Massachusetts, should be dis-

allowed as a contribution not only to said three separate trust estates, but also as a contribution by the Trustee of the alleged single trust.

(c) The Commissioner of Internal Revenue erred in finding that the petition had a net income subject to surtax in the year 1929, in the sum of $155,273.18.

(d) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioner for the year 1929, in the sum of $41,637.34.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

[fol. 53] (a) The instrument under which the United States Trust Company of New York acted as Trustee insofar as the income sought to be taxed against this petitioner is concerned provided for three separate and distinct trusts, to be known respectively as the Martha Wilson Trust, the Anna W. Dickinson Trust and the John P. Wilson, Jr. Trust, (copy of which instrument is hereto attached marked Exhibit "B"). On March 12, 1913, John P. Wilson (the father of John P. Wilson, Jr.) set up a trust with the United States Trust Company of New York as Trustee for the benefit of his three children, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr. The trust deed contained the following provision:

"Any of the provisions of this trust deed may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them and delivered to the Trustee, provided, however, that such instrument must be approved in writing by the said party of the first part if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

[fol. 54] The three beneficiaries named were as above stated the three children of John P. Wilson, namely, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr.

On the 21st day of September, A. D. 1918, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, the said trust deed of March 12, 1913, was duly amended by provisions reading in part as follows:

"First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein."

On the 19th day of June, A. D. 1919, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, the said trust deed as theretofore amended was again amended by provisions reading in part as follows:

[fol. 55] "First. Distribution of Income

"One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come in the hands of the said Trustee.

"In the event of the death of John P. Wilson, Jr., his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickson, her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

[fol. 56] "In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said trust indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

"Second. Distribution of the Principal of the Trust Estate

"Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

"The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust [fol. 57] estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the issue of said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in such shares and interests, and subject to such trusts as may be directed by the last will and testament of each deceased beneficiary; and in default of such direction or appointment, then to the surviving issue, if any, of such deceased

beneficiary per stirpes; and in default of such issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

On December 1, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustee, said trust deed as theretofore amended was again amended in part as follows:

"By striking out the first paragraph of the amendment to said Deed of Trust bearing date the 19th day of June, A. D. 1919, which paragraph so stricken out reads as follows:

'One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such net income shall be paid over in part or in whole [fol. 58] to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the Trustee.'

and substituting in lieu thereof, with like effect as though it had been originally contained in said amendment, the following paragraph, viz:

'The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

[fol. 59] 'So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustee shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.' ".

(b) The Internal Revenue Agent has suggested that because the trust agreements do not name any specific amount to be distributed to any specific institution, therefore the contribution made pursuant to the trust indenture to Williams College in the year 1929, should be disallowed. There has been no objection made on the ground that Williams College is not an exempt institution which apparently is admitted.

The provisions of the trust indenture as amended under which this charitable contribution was made are set forth [fol. 60] in the last of the paragraphs quoted above, and in particular in the phrase reading as follows:

"* * * provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, * * *"

The two surviving beneficiaries of said three separate trusts during the year 1929, were John P. Wilson, Jr., and Anna W. Dickinson. They both requested the Trustee in writing to pay out the contribution in question to Williams College pursuant to the terms of the trust instrument, which required the Trustee to pay out for charitable uses and purposes so much of the net income of the trust as was so requested. Therefore the contribution was directly covered by Section 162 (a) of the Revenue Act of 1928,

which allows an estate to deduct from its income any part of the gross income of the estate without limitation "which pursuant to the terms of the will or deed creating the trust is during the taxable year paid or permanently set aside" for educational purposes, etc.

There is no justification whatsoever for the position of the Revenue Agent that unless the instrument states in dollars and cents just how much shall be paid to charity in [fol. 61] each year the deduction cannot be taken. A taxing statute must be construed most favorably to the taxpayer, and it must not be forgotten that charitable gifts are looked upon with favor by the law. Here the terms of the deed creating the trusts specifically provided that the Trustee should pay out for charitable uses and purposes so much of the net income of the trusts as was requested by the survivors of the three children of John P. Wilson, Sr. The two survivors did request this payment to Williams College and the Trustee made the payment as it was legally required to do by the trust deed.

Under the terms of the trust agreement as amended, copy of which has been attached hereto as Exhibit "B", and the material provisions of which have been quoted above, the petitioner in this case is clearly shown to have been the Trustee of three separate and distinct trusts. As such Trustee it duly reported the income accumulated in said separate trusts and paid the tax due thereon. This has been admitted by the Commissioner of Internal Revenue. Having accounted for and paid the proper tax upon these separate trusts, the Trustee cannot now be taxed as the Trustee of a hypothetical, non-existent trust which combines the income of all of said separate trusts. Furthermore, the gift made by the three separate trusts was made and could only have been made pursuant to the terms of the instrument creating the trusts and was therefore properly deductible under the statute.

Wherefore, the petitioner prays that this Board may hear this case and determine that there is no tax due from [fol. 62] the petitioner herein for the year 1929.

United States Trust Company, of New York, by L. A. Waugh. John P. Wilson, Clay Judson, Attorneys for Petitioner. Wilson & McIlvaine, of Counsel, 140 South Dearborn Street, Chicago, Illinois.

Duly sworn to by L. A. Waugh. Jurat omitted in printing.

[fol. 63] EXHIBIT "A", ANNEXED TO FOREGOING PETITION

Treasury Department, Washington

Aug. 17, 1931.

John P. Wilson, Sr., Trust, c/o United States Trust Company, 45 Wall Street, New York, N. Y.

SIRS:

You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of $41,637.34, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest [fol. 64] will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement, Form 882, Form 870.

Statement

IT:AR:A-2. GR-60D.

In re John P. Wilson, Sr., Trust, c/o United States Trust Company, 45 Wall Street, New York, N. Y.

Tax Liability

Years	Tax Liability	Tax Assessed	Deficiency
1929	$41,637.34	None	$41,637.34

The report of the internal revenue agent in charge at 17 Battery Place, New York, New York, has been reviewed and approved by this office as submitted.

[fol. 65] Careful consideration has been accorded your protest dated April 30, 1931, in connection with the findings of the examining officer, and the information submitted at the conference held in the office of the internal revenue agent in charge. It is held by this office that the income is taxable to the trust as stated in the agent's report and as shown on the return, form 1040, prepared under the provisions of section 3176, R. S.

The computation of tax follows:

Ordinary net income (dividends)	$155,273.18
Surtax on $155,273.18	$ 22,714.64
Tax at 12½% on capital net gain $151,381.63	18,922.70
Total tax	$ 41,637.34
Tax assessed	None
Deficiency	$ 41,637.34

EXHIBIT "B", ANNEXED TO FOREGOING PETITION

This indenture, made this Twelfth of March, in the year of our Lord One Thousand Nine Hundred and Thirteen (A. D. 1913), by and between John P. Wilson, of the City of Chicago, in the County of Cook and State of Illinois, the party of the first part, and the United States Trust Company of New York (hereinafter termed the Trustee), a corporation of New York, having its principal place of [fol. 66] business in the City of New York, the party of the second part, witnesseth:

Article First

The party of the first part, being desirous of establishing and creating the trust hereunder mentioned for the purposes and upon the terms set forth, in consideration of the premises and influences by love and affection for the beneficiaries hereinafter named, does hereby sell, assign, transfer and set over unto the Trustee the following shares of stock and the certificates (in each case endorsed in blank

for transfer) representing and evidencing the said shares of stock and the right thereto, to wit:

200 shares of the preferred capital stock of The Baldwin Locomotive Works;
2500 shares of the common capital stock of the National Carbon Company;
366 shares of the preferred capital stock of the National Carbon Company;
520 shares of the capital stock of the General Electric Company;
250 shares of the capital stock of the By-Products Coke Corporation;
150 shares of the preferred capital stock of the American Locomotive Company;
150 shares of the common capital stock of the International Harvester Company of New Jersey;
87 shares of the preferred capital stock of the International Harvester Company of New Jersey;

[fol. 67] 2

150 shares of the common capital stock of the International Harvester Corporation;
88 shares of the preferred capital stock of the International Harvester Corporation;

and the Trustee is hereby authorized to receive and accept any and all moneys, bonds, notes, shares of stock and other securities which at any time and from time to time, by delivery or by writing of any kind, may be transferred or assigned to the Trustee to become a part of the principal of the trust estate, which, together with any income therefrom accumulated as hereinafter provided, is to be held and disposed of, together with the proceeds thereof, subject to the terms of this agreement.

Article Second

The Trustee shall have power and authority at any time and from time to time.

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject thereto, and the interest upon all moneys, bonds or other obligations at any time held by it hereunder, and to receive any and all

sums at any time payable in respect of any shares of stock, bonds or other obligations or securities which are subject to the provisions of this agreement;

(2) To sell, transfer and assign any or all of the stocks, bonds, obligations, securities or property held by said Trus- [fol. 68] tee under this instrument, and to invest and reinvest the proceeds thereof and the net income derived therefrom which shall not be distributed as hereinafter provided in accordance with any directions given in writing signed by any two of the following persons, viz: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, all of Chicago.

3

It being the intention that no change shall be made by said Trustee in the securities or obligations held in trust by it without the written direction or approval of two of the persons above named, and that said Trustee shall be authorized to make any and every change in the securities or obligations held in trust which shall be directed or approved as aforesaid, and said Trustee shall be free from any liability or responsibility for any action by it which shall be done under or in pursuance of any such written direction or approval.

And in no event shall any purchaser from the Trustee, or any other person or corporation, be required to ascertain the authority and power of the Trustee to make any sale or any securities or any transfer, assignment or delivery thereof, but such purchaser and all other parties shall be entitled to rely upon the delivery or transfer or assignment of any such securities by the Trustee as having been in all respects fully authorized and shall not be affected by any notice to the contrary or be required to see to the application of the purchase money.

[fol. 69] (3) To exercise the voting power upon all shares of stock held by the Trustee hereunder and to exercise every power, election and discretion, give every notice, make every demand and do every act and thing in respect of any shares of stock and bonds or other obligations and securities held by the Trustee hereunder which it could or might do if it were the absolute owner thereof; provided, however, that upon the written request of any two of the beneficiaries above named it shall be the duty of the Trustee to execute

or cause to be executed to the persons named in said request, a proxy entitling him (with full power of substitution) to vote in respect of any shares of stock in such written request or proxy defined and mentioned, at any

4

meeting or meetings of the stockholders of any corporation or corporations specified in such request and proxy;

(4) To receive any and all stocks dividends declared and any other distribution made, in each case other than out of income, which may be made by any corporation any of whose shares of stock at the time constitute a part of the principal of the trust estate; and also all proceeds which may be paid on or in respect of any such shares of stock on the liquidation of the company issuing the same, or upon the sale (whether voluntary or involuntary) of its assets or any part thereof or which may be otherwise paid out of [fol. 70] capital or on account of the principal of any bond, stock or other security; and may in its discretion join any plan of reorganization or of readjustment of any corporation any of whose shares of stock, bonds or other securities or obligations may at the time constitute a part of the principal of the trust estate, and accept the substituted securities and — by said plan allotted in respect of the securities and obligations so held by the Trustee; provided that any and all moneys, stock dividends or other securities received under this paragraph shall constitute and be a part of the principal of the trust estate and not a portion of the income thereof; and that any and all funds paid to the Trustee under the provisions of this paragraph shall be invested and reinvested by the Trustee as and in the same manner as if the securities or obligations in respect of which sums were received had been sold by the Trustee under the power above vested in it.

5

Article Third

Distribution and Application of Income

The term "net income" as used in this indenture shall be held to mean and to include all sums received by the Trustee by way of dividends or interest declared or paid

from income in respect of any of the securities or obligations constituting a part of the principal of the trust estate, after making any and all deductions therefrom in this indenture provided for or required by law.

[fol. 71] Such net income as and when received by the Trustee shall (subject to the proviso hereinafter set forth) be distributed, paid over and applied by the Trustee as follows:

(1) One third (⅓) thereof shall be paid over and distributed to each of the three children of said first party hereinbefore named, viz: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, so long as they shall severally live.

(2) From and after the death of either of said beneficiaries his or her one-third of said net income shall be paid over and distributed in accordance with any directions contained in his or her last will and testament, and in default of any such directions then to the surviving issue, if any, of such deceased child, and in default of such issue then to the beneficiaries entitled to participate in the other two-thirds of said income pro rata; provided, however, that during the fifteen (15) years next ensuing after the date of this indenture the net income of said fund may, with the written consent of the said three beneficiaries or the survivors of them, be accumulated in the hands of said Trustee and be added to and form a part of the principal of the trust fund held hereunder, and

in such case shall be subject to all the provisions of this indenture applicable to the principal of said trust fund.

[fol. 72] Article Fourth

Distribution of Principal of Trust Estate

The trust hereby created shall in any and the latest event terminate at the expiration of twenty-one (21) years from the death of the survivor of Martha Wilson and Anna W. Dickinson, and shall continue only so long as some one of the three children of said first party hereinbefore named shall survive, and said trust may be terminated in whole or in part at any time by an instrument in writing signed

by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustee, provided, however, that during the life of said first party such written instrument must have the written approval of said first party..

Upon the termination of said trust the trust estate then in the hands of said Trustee shall be paid over and distributed as follows:

(a) One-third (⅓) thereof to each of the three children of said first party, hereinbefore named, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson;

(b) If either of said three children shall not then be living his or her one-third (⅓) of said trust estate shall be paid over and distributed (1) in accordance with the provisions of his or her last will and testament, the same in all respects as though the same had formed a part of his or her estate at the time of his or her death; (2) and in default of any disposition thereof by will as aforesaid, then [fol. 73] to the surviving issue, if any, of such deceased child; (2) and in default of such surviving issue then to my surviving issue per stirpes.

7

Article Fifth

Concerning the Trustee

The Trustee hereby accepts the trust created by this indenture, and agrees to act in accordance with the terms and provisions of said indenture, but only upon and subject to the following terms and conditions, which are hereby agreed to by the party of the first part, for himself, his heirs and his legal representatives, and by each and every beneficiary accepting or receiving or claiming any benefit or right under or by virtue of this indenture, to wit:

The Trustee shall be entitled to receive for its compensation in each year two and one half per cent (2½%) of the first Twenty Thousand Dollars ($20,000.00) of the gross income of said trust estate during such year, and one per cent (1%) on the residue of said gross income during such year; and also upon the termination of the trust otherwise than by reason of the resignation of said Trustee a sum equal to one per cent (1%) of the principal of said

trust estate at the date of such termination, which several payments shall be in full payment for all services rendered by said Trustee.

The Trustee may consult with counsel and shall be fully protected in any action or non action taken, permitted or [fol. 74] suffered by it in good faith and in accordance with the opinion of counsel selected or provided by it; and in case of legal proceedings involving the Trustee or the principal of the trust estate, the Trustee may defend such proceedings or may upon being advised by such counsel that such action is necessary or advis-

able for the protection of the interests of the Trustee, or of the beneficiaries, institute any legal proceedings.

The Trustee shall be reimbursed and indemnified against any and all liability, loss or expense because of the holding of any shares of stock or other securities constituting a part of the principal of the trust estate, either in its own name or in the name of a nominee, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss or expense which may be so incurred by it, including the expense of defending any action or proceeding instituted against it or such nominee by reason of any such holding.

Out of the income of the principal of the trust estate, the Trustee shall pay all taxes, assessments or other governmental charges which it may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the Trustee therein or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any state, county, municipality or [fol. 75] other taxing authority therein, any and all such taxes, assessments or other governmental charges lawfully imposed being charged as a lien upon the said income, and in case of deficiency of said income upon the principal of the trust estate.

All payments or distribution of income to beneficiaries in this indenture provided for shall be made out of net income then in the hands of the Trustee and applicable to such purpose, quarterly within six (6) days from the first days of January, April, July and October of each year.

The Trustee shall be entitled before making any such payment or distribution, to deduct from the amount of the income in its hands the amount then accrued and due for its compensation and the reasonable expense incurred by it in and about the administration of the trust, including the compensation of counsel, the expenses of selling or purchasing securities hereunder or investment or reinvestment, any liability, loss or expense to which it may have been subjected as aforesaid, and the amount of any taxes, assessments or other governmental charges which it may have been required to pay in the premises.

The Trustee shall not in any event be liable to any party in interest or to any person whatsoever save only for its own willful default.

The said Trustee may resign at any time by giving notice in writing of such resignation to said first party while he shall live and after his death by giving notice in writing [fol. 76] of such resignation to either one of the three beneficiaries hereinbefore named.

In case of the resignation of the Trustee or of its lisability or incapacity to further act as Trustee, the said party of the first part, if living, shall have power to appoint a successor in trust by an instrument in writing delivered to the said Trustee, and after the death of said first party the three beneficiaries hereinbefore named, or the survivors or survivor of them, shall have power to appoint a successor in trust by an instrument in writing duly signed and delivered to said Trustee, and upon the appointment of such successor in trust the said Trustee shall assign, transfer and deliver to such successor in trust all of the trust estate then in its hands, and there-

upon and thereafter such successor in trust shall have all the rights, powers, duties and authority which were granted to or imposed upon said original Trustee under the provisions of this indenture.

Any of the provisions of this trust deed may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them and delivered to the Trustee, provided, how-

ever, that such instrument must be approved in writing by the said party of the first part if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and [fol. 77] govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form. The Trustee shall be free from any responsibility or liability for any act done by it (including any disposition in whole or in part of the trust estate) in pursuance of the written direction or authority of any two of the following named persons, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, provided such instrument shall be approved by said first party if executed and delivered during his life.

The beneficiaries, or any or either of them, may act through an attorney in fact in signing any and all instruments delivered to the Trustee under this indenture with like effect as though signed in person, and any or either of said beneficiaries may act as such attorney in fact when authorized so to do.

The trust provisions and limitations of this indenture shall be construed according to the laws of the State of Illinois.

11

In witness whereof the parties hereto have executed this instrument under seal, at the City of Chicago, the day and year first above written.

John W. Wilson. (Seal.) United States Trust Company of New York, by Edward W. Sheldon, President. Attest: W. J. Worcester, Secretary. (Corporate Seal.)

[fol. 78] State of Illinois,
County of Cook, ss:

I, Edwin L. Johnson, a Notary Public, in and for the said county, in the state aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instru-

ment as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this Twelfth day of March, A. D. 1913.

Edwin L. Johnson, Notary Public. (Notarial Seal.)

12

STATE OF NEW YORK,
County of New York, ss:

I, George A. Cornwall, a Notary Public in and for said county, in the state aforesaid, do hereby certify that Edward W. Sheldon, personally known to me to be the same person whose name is subscribed to the foregoing instrument as president of the United States Trust Company of New York, and Wilfred J. Worcester personally known to me to be the same person whose name is subscribed to the foregoing instrument as secretary of said Company, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered the said [fol. 79] instrument as their free and voluntary act and as the free and voluntary act of said United States Trust Company of New York, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of March, A. D. 1913.

George A. Cornwall, Notary Public. Notary Public, Westchester County. Certificate filed in New York County No. 11, New York Register No. 4077. (Notarial Seal.)

We, the undersigned, being the three children of John P. Wilson, the party of the first part in a certain indenture dated the 12th day of March, A. D. 1913, named in said indenture as beneficiaries thereunder (the United States Trust Company of New York being named as the party of the second part and Trustee in said indenture), in pursuance of the powers in us vested by the said indenture, do hereby alter, change and modify the said indenture or trust deed as follows; viz:

First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares

(to which may be assigned undivided interests in the whole or any part of the said trust estate, which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall [fol. 80] have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Approved. John P. Wilson.

Second. The whole of the net income received from each share during the remainder of the year 1918, and one half of such net income received after December 31st, 1918, and during the life of said John P. Wilson, the creator of said trust, shall be accumulated and added to the principal of such share: Provided, however, that each of the undersigned, upon his or her written request, approved in each case by said John P. Wilson, and delivered to the said Trustee, shall be entitled to receive the whole or any part of the one-half of the said net income of his or her share of said trust estate so directed

2

to be accumulated in any year, but any such written request shall relate only to the income accruing during the year in which such request is delivered to the Trustee having possession of the trust estate.

Approved. John P. Wilson.

Third. This instrument shall become operative and be in force from the date of its delivery to the said United [fol. 81] States Trust Company, and shall apply to all income received by said Trustee on or after said date.

Fourth. All the provisions of the said trust indenture, except as the same are expressly or necessarily modified or altered by the terms of this instrument (including the power to modify, alter and change the said indenture as the same shall be in force after the delivery of this instrument to the said Trustee) shall remain and continue in full force and effect.

In witness whereof we have hereunto set our hands and seals, this twenty first day of September, A. D. 1918.

Martha Wilson. (Seal.) Anna W. Dickinson. (Seal.)
John P. Wilson, Jr. (Seal.)

State of Illinois,
County of Cook, ss:

I, Edwin L. Johnson, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson personally known to me to be the same

3

persons whose names are subscribed to the foregoing instrument appeared before me this day in person and ac- [fol. 82] knowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this Twenty-third day of September, A. D. 1918.

Edwin L. Johnson, Notary Public. (Notarial Seal.)

We, the undersigned, being the three children of John P. Wilson, the party of the first part in a certain indenture dated the 12th day of March, A. D. 1913, named in said Indenture as beneficiaries thereunder (the United States Trust Company of New York being named as the party of the second part and the Trustee in said Indenture), in pursuance of the powers in us vested by the said Indenture, do hereby alter, change and modify the said Indenture and Trust Deed as the same now exists, as heretofore amended, as follows:

First. Distribution of Income

One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, [fol. 83] as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same

by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the

2

same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said trust indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in accordance with any directions given by such beneficiary in and by his or her last will and [fol. 84] testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

Second. Distribution of the Principal of the Trust Estate

Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust

estate which such deceased beneficiary would have been entitled

3

to receive if living shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in such shares and interests, and subject to such trusts as may be directed by the last will and testament of such deceased beneficiary; [fol. 85] and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

Third. All the provisions of the said Trust Indenture, as heretofore modified or altered (including the power to modify, alter and change the said Indenture as the same shall be in force after the delivery of this instrument to the said Trustee), except as the same are expressly or necessarily modified or altered by the terms of this instrument, shall remain and continue in full force and effect.

In witness whereof we have hereunto set our hands and seals, this 19th day of June, A. D. 1919.

Martha Wilson. (Seal.) John P. Wilson, Jr. (Seal.)
Anna W. Dickinson. (Seal.)

I approve the foregoing instrument and the changes thereby made.
June 19, 1919.

John P. Wilson.

[fol. 86] 4

STATE OF ILLINOIS,
County of Cook, ss:

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their

free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this Nineteenth day of June, A. D. 1919.

Edwin L. Johnson, Notary Public. (Notarial Seal.)

To the United States Trust Company of New York, as Trustee:

You are hereby notified that we, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, the three children of John P. Wilson, named as beneficiaries in a certain Trust Indenture dated the 12th day of March, A. D. 1913 (the United States Trust Company of New York being named as the party of the second part and the Trustee in said Indenture), in pursuance of the powers in us vested by the [fol. 87] said Trust Indenture, do hereby alter, change and modify the said Trust Indenture, as the same now exists as heretofore amended, as follows:

By striking out the first paragraph of the amendment to said Deed of Trust bearing date the 19th day of June, A. D. 1919, which paragraph so stricken out reads as follows:

"One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee."

and substituting in lieu thereof, with like effect as though it had been originally contained in said amendment, the following paragraph, viz:

[fol. 88] "The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to

the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries

2

then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustee shall not be under any obligation to inquire as to the nature of the uses for which said pay-
[fol. 89] ments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid."

In witness whereof we have hereunto set our hands and seals this First day of December, A. D. 1920.

Martha Wilson. (Seal.) John P. Wilson, Jr. (Seal.)
Anna W. Dickinson. (Seal.)

I approve the foregoing instrument and the change thereby made.

December 13th, A. D. 1920.

John P. Wilson.

3

STATE OF ILLINOIS,
County of Cook, ss:

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson and John P. Wilson, Jr., personally known

to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, [fol. 90] for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 13th day of December, A. D. 1920.

Edwin L. Johnson, Notary Public. (Notarial Seal.)

STATE OF CALIFORNIA,
County of Santa Barbara, ss:

I, Lloyd I. Tilton, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anna W. Dickinson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 6th day of December, A. D. 1920.

Lloyd I. Tilton, Notary Public. (Notarial Seal.)

My commission expires Aug. 4, 1924.

[fol. 91] STATE OF CALIFORNIA,
County of Santa Barbara, ss:

I, C. A. Hunt, County Clerk of the County of Santa Barbara, and also Clerk of the Superior Court for the said County; the same being a Court of Record, do hereby certify that Lloyd I. Tilton whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County of Santa Barbara, dwelling in said County, commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and

affixed the seal of said Court, this 6th day of December A. D. 1920.

C. A. Hunt, Clerk, by A. M. Knight, Deputy. (Seal Superior Court, Santa Barbara Co., Cal.)

[fol. 92] STATE OF ILLINOIS,
County of Cook, ss:

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 13th day of December, A. D. 1920.

Edwin L. Johnson, Notary Public. (Notarial Seal.)

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER, No. 59919

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Rev-
[fol. 93] enue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits that the petitioner is a corporation organized under the laws of the State of New York, having its principal office at 45 Wall Street, New York, New York. Admits that the petitioner is a fiduciary in this case. Admits that the petitioner is a trustee under a certain trust instrument originally executed by John P. Wilson on March 12, 1913. Denies all other allegations contained in Paragraph 1 of the petition.

2. Admits the allegations contained in Paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1929. Denies that the amount in controversy is as alleged in Paragraph 3 of the petition.

4. Denies that the Commissioner erred as alleged in Paragraph 4 of the petition.

5. (a) Admits that on March 12, 1913, John P. Wilson created a trust with the United States Trust Company of New York as trustee for the benefit of his three children, Martha Wilson, Anna W. Dickinson, and John P. Wilson, Jr. Denies all other allegations of fact contained in subparagraph (a) of Paragraph 5 of the petition.

5. (b) Denies all allegations of fact contained in subparagraph (b) of Paragraph 5 of the petition.

[fol. 94] Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Board redetermine the deficiency for the year 1929, in the amount as determined by the Commissioner, or redetermine such deficiencies against the petitioner as trustee or trustees under the trust instrument referred to in the petition, as may be due for the year 1929, on the facts and under the law applicable thereto.

(Sgd.) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: F. R. Shearer, Special Attorney, Bureau of Internal Revenue.

ELU: MEP.
11-5-31.

[fol. 95] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 52949, 57568, 59919

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

CLAY JUDSON, ESQ., and JOHN P. WILSON, ESQ., for the petitioner.

F. R. SHEARER, ESQ., and E. L. UPDIKE, ESQ., for the respondent.

MEMORANDUM OPINION

SEAWELL:

These proceedings were consoldated for hearing and report and involve the redetermination of deficiencies in income taxes as follows:

Year	Deficiency
1924	$23,948.97
1925	12,946.44
1926	15,654.45
1927	29,078.25
1928	44,060.77
1929	41,637.34

By agreement the cases were submitted upon a single issue of whether that portion of the income derived from certain property held in trust which was not distributed or dis- [fol. 96] tributable to the beneficiaries is subject to income tax on the basis of a single trust or three trusts. The parties further stipulated that if the issue be decided in favor of the petitioner orders may be entered in the proceedings finding that there are no deficiencies due from or overpayments due to, the petitioner respecting income tax liability under the trust deed as amended, for the taxable years. They have also agreed upon the amount of the deficiency each year in case we should decide the issue in favor of the respondent.

On March 12, 1913, John P. Wilson transferred, in writing, certain stock to the petitioner, in trust, with directions to pay one-third of the net income derived from the property to each of his three children, John P. Wilon, Jr., Martha Wilson, and Anna W. Dickinson. Provision was made in the trust deed for the termination of the trust in the latest event at the expiration of twenty-one years from the death of the survivor of Martha Wilson and Anna W. Dickinson; the distribution of the corpus upon the termination of the trust; and for altering, changing and modifying the indenture in any respect at any time by an instrument in writing signed by the three beneficiaries with the approval of the grantor, if then living. The instrument also contained provisions in Article "Fifth" for (a) the acceptance of the trust by the trustee; (b) compensation to the trustee for administering the trust; (c) reimbursement of the trustee for any loss sustained because of the holding of any securities constituting

a part of the corpus of the trust; (d) the payment of taxes [fol. 97] by the trustee on the property of the trust; and (e) the appointment of successors to the trustee. These provisions were never amended or modified.

On September 21, 1918, the beneficiaries, with the approval of the grantor, executed an instrument in which the indenture of March 12, 1913, was modified in the following material respects:

First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. The whole of the net income received from each share during the remainder of the year 1918, and one half of such net income received after December 31, 1918, and during the life of said John P. Wilson, the creator of said trust, shall be accumulated and added to the principal of such share; Provided, however, that each of the undersigned, upon his or her written request approved in each [fol. 98] case by said John P. Wilson, and delivered to the said Trustee, shall be entitled to receive the whole or any part of the one half of the said net income of his or her share of said trust estate so directed to be accumulated in any year, but any such written request shall relate only to the income accruing during the year in which such request is delivered to the Trustee having possession of the trust estate.

The same parties amended the indenture in a like manner on June 19, 1919. Sections "First" and "Second" of the instrument are in the following words:

First. Distribution of Income

One half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one half (½) of such

net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid shall be added to the principal of the trust fund from [fol. 99] which it is derived; as and when the same shall come into the hands of the said Trustee.

In the event of the death of John P. Wilson, Jr., his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said trust indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

[fol. 100] Second. Distribution of the Principal of the Trust Estate

Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid

over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the issue of the said grantor, John P. Wilson, and to the surviving wife or husband of such deceased beneficiary, and to and for charitable uses and purposes, in such shares and interests, and subject to such trusts as may be directed by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

The trust deed, as amended, was further modified on December 1, 1920, by the beneficiaries with the approval of the grantor, by striking out the first paragraph of the "First" section of the amendment of June 19, 1919, and substituting in lieu thereof provisions as follows:

[fol. 101] The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustee shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustee shall not be under any obligation

to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of [fol. 102] a written request signed as aforesaid.

The powers given the trustee in the original indenture were modified on April 25, 1928, by an instrument signed by John P. Wilson, Jr., and Anna W. Dickinson, the grantor and Martha Wilson having died on October 3, 1922, and September 25, 1923, respectively. The third paragraph of the amendment, the other provisions not being material, is in the following language:

All sums at any time borrowed in pursuance of this authority shall be and be dealt with as part of the principal of the three trusts hereunder, in equal shares, in the same manner and to the same extent as any other cash constituting part of the principal of said trust estates, and in no event shall any person or corporation lending money to the Trustee hereunder be required to ascertain the authority and power of the Trustee to borrow the same, nor shall any person or corporation so lending money to said Trustee be required to see to the application of the money so lent.

Each of the above-mentioned modifications to the trust deed was delivered to the trustee a short time after its execution.

The purpose of the amendment of September 21, 1918, was to create three separate and distinct trusts, one for each of the beneficiaries of the single trust then in existence, in order to reduce liability for income taxes on the income of the trust.

[fol. 103] Prior to the first amendment the trustee kept one cash account for the trust under the heading "Trust under deed of John P. Wilson, for John P. Wilson, Jr., and others" to which was credited all income of the trust. On September 27, 1918, three accounts were opened up by the trustee, one in the name of "Trust under Deed of John P. Wilson for John P. Wilson, Jr."; one under the name of "Trust under Deed of John P. Wilson, for Anna W. Dickinson"; and the other under the name of "Trust under Deed of John P. Wilson, for Martha Wilson." The single account was then closed by transferring equal amounts of its balance to each of the new accounts. Thereafter cash

received and disbursed on account of the trust property was entered in these accounts, one-third in each.

At the same time the property account kept by the trustee for the stock of the single trust was closed out by transferring the items thereof equally to accounts opened up under the names of the three beneficiaries. There was no actual division of the property held under the trust indenture. The new accounts as set up showed that one-third of each asset of the old trust represented the corpus of three new trusts, one for each of the three children of the grantor. Acquisitions of additional principal by purchase were divided equally among the three trusts.

The stock certificates acquired by the trustee before and after September 21, 1918, were carried in the name of the petitioner as trustee under the deed of trust of John P. Wilson or in the name of a nominee of the trustee.

[fol. 104] The cash belonging to the trusts in question here and all other trusts being administered by the trustee was kept in one general account with another bank.

During the taxable years the trustee rendered separate reports each month to the beneficiaries on the basis of a separate trust for each. For each of the years 1924 to 1929, inclusive, it filed fiduciary and income tax returns on the basis of a separate and distinct trust for each child. In his audit of the returns the respondent determined that the income held in trust under the indenture of March 12, 1913, as amended, was taxable on the basis of a single trust and a single return for each year.

We had the same question before us in William B. McIlvaine et al., Trustees, 29 B. T. A.—(promulgated November 7, 1933), proceedings involving the same grantor and beneficiaries. From all the facts present there we held that the instruments, as amended, established three separate and distinct trusts, not one, as the respondent contended. The facts here are strikingly similar and lead to the same conclusion.

The intent of the grantor and beneficiaries when executing the amendment of September 21, 1918, was to create three trusts, one for each of the beneficiaries. Only a few instances need be cited to show that the intent was clearly expressed. In the first amendment provision was made for the division of the trust estate into three separate and equal parts, one for each of the three beneficiaries. Any doubt as

to the meaning of this language is cleared up by the modifications made by the agreement executed on June 19, 1919. [fol. 105] There the beneficiaries, with the written approval of the grantor, stated that one-half of the net income of "each of the three trust estates" should be disbursed in a prescribed manner; that any net income from "each of said trusts" not paid over to the beneficiaries should be added to the principal of the trust fund from which it was derived, and that upon the termination of the "trusts" the corpus of the "several trust estates" held by virtue of the indenture should be distributed as provided for. Language of the same general character was used in amendments made on December 1, 1920, and April 25, 1928.

The respondent makes the same contentions here that he did in William B. McIlvaine et al., Trustees, supra. They were fully considered and discussed there, and no useful purpose would be served by passing upon them again in these proceedings.

We are of the opinion, and so hold, that the instrument of March 12, 1913, as amended, established three separate and distinct trusts. It follows that the income derived from the property held under the instrument, as amended, which was not distributed or distributable to the beneficiaries, is taxable each year on the basis of three separate trusts and three separate returns, as contended by the petitioner.

In accordance with the stipulation, appropriate orders will be entered herein finding that there are no deficiencies due from, or overpayments due to, the petitioner respecting income tax liability as trustee under the indenture of March 12, 1913, as amended, for the taxable years.

[fol. 106] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 52949

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered November 15, 1933, it is

Ordered and decided that there are no deficiencies due from, or overpayments due to, the petitioner respecting income tax liability as trustee under the indenture of March 12, 1913, as amended, for the taxable years 1924, 1925 and 1926.

Enter.

(Signed) Logan Morris, Member.

Entered, Nov. 16, 1933.

[fol. 107] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 57568

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered November 15, 1933, it is

Ordered and decided that there are no deficiencies due from, or overpayments due to, the petitioner respecting income tax liability as trustee under the indenture of March

12, 1913, as amended, for the taxable years 1927 and 1928.
Enter.

(Signed) Logan Morris, Member.

Entered, Nov. 16, 1933.

[fol. 108] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 59919

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered November 15, 1933, it is

Ordered and decided that there is no deficiency due from, or overpayment due to, the petitioner respecting income tax liability as trustee under the indenture of March 12, 1913, as amended, for the taxable year 1929.
Enter.

(Signed) Logan Morris, Member.

Entered, Nov. 16, 1933.

[fol. 109] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, and E. Barrett Prettyman, General

Counsel, Bureau of Internal Revenue, and respectfully shows:

I

Jurisdiction

That he, the petitioner on review, is the duly appointed, qualified and acting Commissioner of Internal Revenue of [fol. 110] the United States, holding his office by virtue of the laws of the United States.

The respondent on review, United States Trust Company of New York, is a corporation organized under the laws of the State of New York and having its principal office at 45 Wall Street, New York City. Respondent on review was at all times material hereto and now is the trustee under a deed of trust executed by John P. Wilson and said respondent on review under date of March 12, 1913, and under said deed of trust as subsequently amended. As the fiduciary under said deed of trust as amended the respondent on review was and is subject to the provisions of the Federal income tax laws. Petitioner on review filed its fiduciary returns of income, and its income tax returns, in respect of income from property held by it under said deed of trust as amended, for the calendar years 1924 to 1929, inclusive, with the United States Collector of Internal Revenue for the Second District of New York, whose office was and is located in New York City within the Second Circuit.

This is a proceeding for review by the Circuit Court of Appeals for the Second Circuit, pursuant to statute in such cases made and provided, of the action taken by the United States Board of Tax Appeals in its memorandum opinion entered November 15, 1933, and in its decisions rendered pursuant thereto and entered November 16, 1933, redetermining that there are no deficiencies in income tax due from, nor overpayments due to, the respondent on review for the years 1924, 1925, 1926, 1927, 1928 and 1929, instead [fol. 111] of deficiencies of $23,948.97, $12,946.44, $15,654.45, $29,078.25, $44,065.77 and $41,637.44, respectively, as previously determined by the Commissioner of Internal Revenue.

II

Nature of the Controversy

Under date of March 12, 1913, John P. Wilson, late of Chicago, Illinois, created a trust by a trust indenture bearing that date executed by himself as grantor and by the respondent on review as trustee. By this indenture certain securities were transferred to the respondent on review as trustee to be held in trust principally for the benefit of the grantor's three children, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson. Provision was made for the termination of the trust at the latest at the expiration of twenty-one years from the death of the survivor of Martha Wilson and Anna W. Dickinson. Otherwise it was to continue only so long as some one of the three children should survive, and might be earlier terminated in whole or in part by an instrument in writing signed by said three children, or the survivor of them, with the consent of the grantor if living. The trust indenture contained a provision reading as follows:

"Any of the provisions of this trust deed may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor [fol. 112] of them and delivered to the Trustee, provided, however, that such instrument must be approved in writing by the said party of the first part if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

Under dates of September 21, 1918, June 19, 1919, December 1, 1920, and April 25, 1928, certain amendments of the original trust indenture were duly executed and approved. As so amended the trust indenture was in force and effect during the calendar years 1924 to 1929, inclusive. During those calendar years the respondent on review as trustee received certain income from the property so held in trust, a portion of which was not currently distributed or distributable to the beneficiaries, and which was accordingly tax-

able to the respondent on review as fiduciary. The respondent on review made its fiduciary returns of income, and its income tax returns as trustee, for said taxable years, respectively, on the theory that the amendments above referred to operated to establish three separate trusts for Federal income tax purposes, thereby obtaining the benefit of three exemptions and also the benefit of lower surtax rates than would be the case if the same amount of income had been reported in a single return.

[fol. 113] Upon audit of said returns the Commissioner to Internal Revenue found and held that the trust indenture of March 12, 1913, as amended, had the effect of creating and establishing but a single trust for income tax purposes. Accordingly, under date of December 20, 1930, the Commissioner mailed to the respondent on review a notice of deficiency for the years 1924, 1925 and 1926 from which the respondent on review duly appealed to the United States Board of Tax Appeals by petition filed February 17, 1931, under Docket No. 52949. Thereafter, under date of March 7, 1931, the Commissioner mailed to the respondent on review a notice of deficiency for the years 1927 and 1928 from which the respondent on review duly appealed to the United States Board of Tax Appeals by petition filed May 1, 1931, under Docket No. 57568. Thereafter, under date of August 17, 1931, the Commissioner duly mailed to the respondent on review a notice of deficiency with respect to the year 1929 from which an appeal was duly taken by petition filed with the Board of Tax Appeals September 12, 1931, under Docket No. 59919.

The three proceedings were consolidated for hearing and report. Prior to trial the case involved several issues all but one of which were disposed of by a stipulation filed at the hearing in which revised deficiencies were conditionally agreed to in the event the main issue should be decided in favor of the Commissioner. The question submitted to the Board of Tax Appeals was:

Whether that part of the income from the property held [fol. 114] in trust under the deed of trust of John P. Wilson dated March 12, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years involved herein (there being no controversy in rspect of the amount of such income) should be subjected to income taxes on the basis of a single trust and

a single return (1040) for each year as held by the Commissioner, or on the basis of three separate trusts and three separate returns (1040) for each year as contended by the trustee.

After due hearing the Board of Tax Appeals promulgated its memorandum opinion, entered November 15, 1933, including therein certain findings of fact, and concluding that the trust indenture as amended established three separate and distinct trusts, and that for each taxable year the income derived from the property held under the instrument as amended, which was not distributed or distributable to the beneficiaries, was taxable on the basis of three separate trusts and three separate returns. Pursuant thereto the Board rendered its decisions, which were entered November 16, 1933, redetermining that there were no deficiencies and no overpayments for the years in question.

III

Assignments of Error

The Commissioner of Internal Revenue being aggrieved [fol. 115] by the action of the United States Board of Tax Appeals and by the findings of fact and conclusions of law made by the Board is desirous to obtain a review thereof by the Circuit Court of Appeals for the Second Circuit. As reasons for such review he alleges that the United States Board of Tax Appeals committed the following errors:

1. The Board's decisions are contrary to law.

2. The Board erred in holding that the trust instrument dated March 12, 1913, as amended in 1918, 1919 and 1920, established three separate and distinct taxable trusts.

3. The Board erred in holding that the income derived from the property held under the instrument as amended, which was not distributed or distributable to the beneficiaries, should be taxed on the basis of three separate trusts and three separate returns.

4. The Board's findings or conclusions, to the effect that the purpose and intent of the amendments of 1918, 1919, 1920 and 1928 was to create three trusts for the one then in existence, and that sufficient words were used in the amend-

ments to create three separate and distinct trusts, are not sustained by substantial evidence.

5. The Board's findings, to the effect that the income for the years 1924 to 1929, inclusive, from the property held in trust under said instrument dated March 12, 1913, as [fol. 116] amended, was derived one-third each from property held under three separate and distinct trusts, are not sustained by substantial evidence.

6. The Board erred in failing to hold that that part of the income from the property held in trust by the respondent on review as trustee under the deed of trust of John P. Wilson dated March 12, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years, should be subjected to income taxes on the basis of a single trust and a single return for each taxable year.

7. The Board erred in deciding that there are no deficiencies due from the respondent on review for the years 1924, 1925, 1926, 1927, 1928 and 1929.

8. The Board erred in failing to decide that there are deficiencies due from the respondent on review, as trustee under said deed of trust dated March 12, 1913, as amended, as follows:

Taxable year	Correct deficiency in tax
1924	$17,994.46
1925	8,896.64
1926	10,295.82
1927	14,610.77
1928	13,953.22
1929	11,184.59

Wherefore, the Commissioner of Internal Revenue petitions that the action taken by the United States Board of [fols. 117 & 118] Tax Appeals in this proceeding be reviewed by the United States Circuit Court of Appeals for the Second Circuit, that a transcript of the record be prepared in accordance with law and the rules of said Court and transmitted to the Clerk of said Court for filing, and that appro-

priate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) Frank J. Wideman, Assistant Attorney General. (Signed) E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue. Of Counsel: F. H. Shearer, Special Attorney, Bureau of Internal Revenue.

Duly sworn to by F. R. Shearer. Jurat omitted in printing.

[fol. 119] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW

To United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson, 45 Wall Street, New York, N. Y.:

You are hereby notified that the Commissioner of Internal Revenue did, on the 9th day of February, 1934, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of decisions of the Board heretofore rendered in the above entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 10th day of February, 1934.

(Signed) E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue.

[fol. 120] Service acknowledged, including copy of petition for review and assignments of error, this 13th day of February, 1934.

United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson, by (Sgd.) L. A. Waugh, Assistant Comptroller.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

B. T. A. Nos. 52949, 57568 and 59919

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

v.

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Respondent

Statement of Evidence

The following is a statement in narrative form of the evidence in the proceedings instituted before the United States Board of Tax Appeals by petitions filed February [fol. 121] 18, 1931, June 18, 1931 and September 12, 1931, captioned "United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson, Petitioner, v. Commissioner of Internal Revenue, Respondent," and bearing Docket Nos. 52949, 57568 and 59919, respectively.

The proceedings came on for hearing pursuant to notice on October 5 and 6, 1932, at Washington, D. C., before the Hon. Herbert F. Seawell, Member of the United States Board of Tax Appeals, whereupon the following proceedings were had, and testimony and documentary evidence heard and received.

Clay Judson, Esq., and John P. Wilson, Esq., appeared on behalf of the "United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson" (hereinafter sometimes referred to as "taxpayer").

F. R. Shearer, Esq., and E. L. Updike, Esq. (C. M. Charest, General Counsel, Bureau of Internal Revenue) appeared on behalf of the Commissioner of Internal Revenue (hereinafter referred to as "Commissioner").

The following stipulation was offered by counsel for taxpayer and was duly received in evidence as joint Exhibit No. 3:

EXHIBIT No. 3

[fol. 122] "UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 52949, 57568 and 59919

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John P. Wilson, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Stipulation

"It is hereby stipulated and agreed by and between the parties hereto as follows:

"1. The Board may consolidate these three proceedings for hearing and decision.

"2. These proceedings are to be submitted to the Board upon a single issue, namely, whether that part of the income from the property held in trust by the petitioner under the deed of trust of John P. Wilson dated March 12, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years involved herein (there being no controversy in respect of the amount of such income) should be subjected to income taxes on the basis of a single trust and a single return (1040) for each year as held by the Commissioner, or on the basis of three separate trusts and three separate re- [fol. 123] turns (1040) for each year as contended by the petitioner. All other issues are waived and no new issues will be raised.

"3. Both parties hereto reserve the right to offer and introduce competent material evidence relevant to the issue above mentioned.

"4. In the event the issue above mentioned be finally determined and decided in favor of the petitioner, an order of redetermination may be entered finding that there are no deficiencies due from this petitioner and that there are no overpayments due to this petitioner in respect of its Federal income tax liability as trustee under said deed of

trust dated March 12, 1913, as amended, for the calendar years 1924, 1925, 1926, 1927, 1928 and 1929.

"5. In the event the above mentioned issue be finally determined and decided against the petitioner and in favor of the respondent, the following is a correct statement in respect of petitioner's Federal income tax liability as trustee under said deed of trust dated March 12, 1913, as amended, for the calendar years 1924, 1925, 1926, 1927, 1928 and 1929, and in that event the Board may enter an order of redetermination for the amounts designated below as deficiencies to be assessed for each of said years:

[fol. 124] "Year 1924

Tax liability		$23,948.97
Tax assessed:		
On return of United States Trust Company of New York, trustee estate of John P. Wilson for remainder interests after John P. Wilson, Jr., Account No. 304364	$1,984.83	
On return of United States Trust Company of New York, trustee Anna W. Dickinson Trust, under deed of trust of John P. Wilson, Account No. 304363	1,984.84	
On return of United States Trust Company of New York, trustee Martha Wilson Trust, under deed of John P. Wilson, Account No. 304365	1,984.84	
		5,954.51
Deficiency to be assessed		$17,994.46

[fol. 125] "Year 1925

Tax liability		$24,329.00
Tax assessed:		
On return of United States Trust Company of New York, trustee Estate John P. Wilson, for remainder intersts after John P. Wilson, Jr., Account No. 304917	$5,144.02	

"Year 1925—(Continued)

On return of United States Trust Company of New York, trustee Estate John P. Wilson, for remainder interests after Anna W. Dickinson, Account No. 304916	5,144.15	
On return of United States Trust Company of New York, trustee Estate John P. Wilson, for remainder interests after Martha Wilson, Account No. 304915	5,144.19	
		15,432.36
Deficiency to be assessed		$8,896.64

[fol. 126] "Year 1926

Tax Liability		$27,021.57
Tax assessed:		
On return of United States Trust Company of New York, trustee under deed John P. Wilson (John P. Wilson, Jr., Trust), Account No. 313069	$5,576.41	
On return of United States Trust Company of New York, trustee under deed John P. Wilson (Anna W. Dickinson Trust), Account No. 313070	5,573.36	
On return of United States Trust Company of New York, trustee under deed John P. Wilson (Martha Wilson Trust), Account No. 313071	5,575.98	
		16,725.75
Deficiency to be assessed		$10,295.82

[fol. 127] "Year 1927

Tax liability	$29,078.25

"Year 1927—(Continued)

Tax assessed:		
On return of United States Trust Company of New York, trustee under deed of John P. Wilson —John P. Wilson, Jr., Trust, Account No. 318086	$4,820.97	
On return of United States Trust Company of New York, trustee under deed of John P. Wilson —Anna W. Dickinson Trust, Account No. 318087	4,825.51	
On return of United States Trust Company of New York, trustee under deed of John P. Wilson (Martha Wilson Trust), Account No. 318085	4,821.00	
		14,467.48
Deficiency to be assessed		$14,610.77

[fol. 128] "Year 1928

Tax liability		$44,060.77
Tax assessed:		
On return of United States Trust Company of New York, trustee under deed of John P. Wilson —John P. Wilson, Jr., Trust, Account No. 326951	$10,035.86	
On return of United States Trust Company of New York, trustee under deed of John P. Wilson (Anna W. Dickinson, Trust), Account No. 326952	10,035.81	
On return of United States Trust Company of New York, trustee under deed of John P. Wilson (Martha Wilson Trust), Account No. 326950	10,035.88	
		30,107.55
Deficiency to be assessed		$13,953.22

[fol. 129] "Year 1929

Tax liability		$36,637.34
Tax assessed:		
On return of United States Trust Company of New York, trust under the deed of John P. Wilson (John P. Wilson, Jr., Trust), Account No. 308216	$8,484.26	
On return of United States Trust Company of New York, trustee under the deed of John P. Wilson (Anna W. Dickinson Trust), Account No. 308215	8,484.34	
On return of United States Trust Company of New York, trust under deed of John P. Wilson (Martha Wilson Trust), Account No. 308213	8,484.15	
		25,452.75
Deficiency to be assessed		$11,184.59

[fol. 130] "6. Nothing herein contained shall be considered as a waiver by either party of its right to petition for review or otherwise appeal from the decision of the Board on the reserved issue above mentioned.

(Signed) John P. Wilson, (Signed) Clay Judson, Attorneys for Petitioner. (Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue, Attorney for Respondent."

Whereupon JOHN P. WILSON was called as a witness on behalf of taxpayer, and being duly sworn, was examined and testified as follows:

Direct examination:

My name is John P. Wilson. Until after the death of my father, in October, 1922, I was known as John P. Wilson, Jr. The John P. Wilson named in the caption of the three cases on trial was my father.

I am familiar with the trust indenture and all the amendments thereto involved in these three cases. The docu-

ments now exhibited to me are the original signed copies of the trust indenture and the amendments thereto and the signatures appearing upon those documents are familiar to me. They are the genuine signatures of the persons they purport to be. The instrument dated March 12, 1913 was signed by John P. Wilson on or about the 12th day of [fol. 131] March, 1913. The instrument was executed by the United States Trust Company of New York by Edward Sheldon, President, on or about the 14th day of March, 1913. Said instrument was delivered as soon as possible after the 14th day of March, 1913.

The amendment dated September 21, 1918, was signed by Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., on or about the 23rd day of September, 1918, with whose signatures I am familiar and identify; it was also on that date approved by John P. Wilson in writing as indicated on the margin. Said amendment was delivered to the trustees not later than three days after the 18th—that is, I mean after the 23rd of September, I mean on or before the 26th day of September, 1918, and by the trustees I mean the United States Trust Company of New York.

The amendment of June 19, 1919, was signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson on the 19th day of June, 1919, each of whose signatures I am familiar with and identify. It was signed on the same date and approved by John P. Wilson and on or before the 22nd day of June, 1919, it was delivered to the United States Trust Company of New York as trustee under the deed of trust of John P. Wilson dated March 12, 1913.

The amendment dated December 1, 1920, was executed by Anna W. Dickinson on December 6, 1920, as indicated by the acknowledgment attached; it was signed by Martha Wilson and John P. Wilson, Jr., on December 13, 1920, as indicated by the acknowledgment. All three of the signatures are familiar to me and I identify them as the [fol. 132] original. It was also executed for approval on December 13, 1920, by John P. Wilson; and on or before the 16th day of December, that instrument was delivered to the United States Trust Company of New York, trustee under the deed of trust of John P. Wilson dated March 12, 1913.

I am the John P. Wilson, Jr., whose signature appears on the documents mentioned. Martha Wilson and Anna

W. Dickinson were my sisters. John P. Wilson was my father. Martha Wilson is not now living. She died on December 25, 1923. She was never married and left no issue surviving her. She did not exercise any power of appointment in her will, or otherwise, under this trust indenture, or any of the amendments thereto. My father died on October 3, 1922.

(A certain document was marked Taxpayer's Exhibit No. 1 for identification.)

In addition to the amendments to which I have testified there was one amendment to the instrument of March 12, 1913. This amendment was executed on April 25, 1928, by John P. Wilson, Jr., and Anna W. Dickinson as the then only surviving children of John P. Wilson, the creator of the trust. The document which I have in my hand is the original of that amendment and was acknowledged on the 30th day of April by Anna W. Dickinson and, I assume, signed on or about that date, and was acknowledged by me. My signature was acknowledged on the 2nd day of May, 1928, and the document itself was delivered to the United States Trust Company of New York as trustee under the [fol. 133] deed of trust of John P. Wilson dated March 12, 1913, on or before May 5, 1928.

The document marked as Taxpayer's Exhibit No. 1 for identification was exhibited to the witness and he was asked whether said document was a true copy which had been compared by him with the original trust instrument dated March 12, 1913, and all amendments thereto to which he had testified except the last, and he answered, "It was personally compared by me before printing." The original of the last amendment to which the witness testified was marked Taxpayer's Exhibit No. 2 for identification. Thereupon the documents marked Exhibits No. 1 and No. 2 for identification were offered by counsel for the taxpayer and duly received in evidence as Taxpayer's Exhibits No. 1 and No. 2 with the understanding that there was no objection to the substitution of a copy for the document marked Exhibit No. 2 for identification. The document attached to the petition filed with the Board of Tax Appeals in the proceeding bearing Docket No. 59919 and

marked Exhibit B is a true and correct copy of Taxpayer's Exhibit No. 1 and is by reference made a part of this statement of the evidence. Exhibit No. 2, omitting three certificates of acknowledgment, is, in words and figures, as follows:

EXHIBIT No. 2

"To the United States Trust Company of New York, as Trustee under Deed of Trust of John P. Wilson bearing date March 12, A. D. 1913:

"The undersigned, being the only two surviving children of John P. Wilson, the grantor in said indenture dated [fol. 134] the twelfth day of March, A. D. 1913, in pursuance of the power and authority vested in us by said indenture, do hereby alter, change and modify the said Indenture of Trust as the same has heretofore been amended, as follows:

"By changing and altering Article Second of said Indenture so that the powers given to the Trustee thereunder, from and after the date of the delivery of this instrument to said Trustee, shall be enlarged by adding to said Article Second, as subhead (5) thereof, the following provision, viz.:

" '(5) To borrow such sum or sums of money as said Trustee hereunder shall be authorized and directed in writing to borrow by John P. Wilson, Jr., son of John P. Wilson, the grantor hereunder. Said John P. Wilson, Jr., shall hereunder have power, in his own unfettered discretion, from time to time to direct the borrowing of such sum or sums of money as he deems wise and expeident. When said Trustee is so directed and authorized to borrow, it shall have and is hereby given power to borrow the sum or sums so directed to be borrowed from such persons or corporations as the Trustee in its unlimited discretion may select, and any sums so borrowed by the Trustee hereunder, in pursuance of this authority, may be on such terms, for such length of time, and at such rate of interest as the Trustee shall in its own discretion deem reasonable and expedient.

[fol. 135] " 'For the purpose of carrying out and making effective the power and authority herein given, said Trustee hereunder as such is hereby expressly authorized and empowered: (a) to execute and deliver any note or notes or

other instruments which the Trustee deems proper in connection with carrying out the power and authority herein given; (b) to pledge and hypothecate any and all stocks or bonds belonging to the trust estate hereunder for the purpose of securing any sum or sums borrowed in pursuance hereof and any notes or other instruments evidencing the sums so borrowed.

"'All sums at any time borrowed in pursuance of this authority shall be and be dealt with as part of the principal of the three trusts hereunder, in equal shares, in the same manner and to the same extent as any other cash constituting part of the principal of said trust estates, and in no event shall any person or corporation lending money to the Trustee hereunder be required to ascertain the authority and power of the Trustee to borrow the same, nor shall any person or corporation so lending money to said Trustee be required to see to the application of the money so lent.'

"All of the provisions of said Trust Indenture, as heretofore modified and amended (including the power to modify, alter and change the said Indenture as the same [fol. 136] shall be in force after the delivery of this instrument to said Trustee), except as the same are expressly or necessarily modified or altered by the terms of this instrument, shall remain and continue in full force and effect.

"In witness whereof we have hereunto set our hands and seals this twenty-fifth day of April, A. D. 1928.

John P. Wilson, Jr. (Seal.) Anna W. Dickinson. (Seal.)"

Cross-examination:

The purpose of the amendment of September 21, 1918, was to have the trust estate divided into three separate trust estates and constitute three separate trusts, one for each of the three children of John P. Wilson, the original creator of the trust; also the question of minimizing taxes entered into the matter. I really don't remember if, at the time this amendment was executed, the Revenue Act of 1918, was under consideration by Congress. It may have been. I don't remember the exact date when it was passed. I have had something to do with the management of the trust since 1913. You will find, in the provisions of the

trust, that it is expressly provided that the trustees can only make such investments as are directed by the majority—let me look at it. Let me look at that instrument a moment; that the trustee can only make such investments as are directed by two, or not less than two, of the original [fol. 137] beneficiaries, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr. Therefore, in every instance when there has been any change, the purchase or sale of securities or stock or any other property belonging to the trust, it has been in pursuance of written directions given by not less than two of the beneficiaries, and I have generally been one of those, I think universally I have been one of those, but I joined in every direction. Aside from directing the investment I have had nothing to do with the management of the trust. I have nothing at all to do with the question of the bookkeeping arrangement of the United States Trust Company of New York in connection with the Trust under this deed except to receive their regular monthly statements. It may be that I did write the United States Trust Company of New York about 1919 or 1920, but they were regularly going along administering the trust. I may have written to them then; perhaps I did. I don't remember whether the substance of what I wrote had to do with the entries to be made as of December 31, of the year in connection with the income of the trust property. I may have written to them. If you have any such letter I will be glad to identify it. I have no such correspondence with me today. Mr. Waugh may have some. The administration of the New York trust has been in their hands and I have had little to do with it, outside of giving them directions; you may have some letters that I have written to them but as a general rule I have nothing to do with administering that trust. I could not tell you [fol. 138] definitely whether I had anything to do with giving instructions as to how the New York Trust Company should set up its books, in order to give effect to the amendment of 1918. Before you asked me I would have said no, but now you ask me I don't remember. I have been a trustee of the trust company—that is, a position corresponding to a directorate in a bank—for about a year and a half, and I have never even taken the trouble to look at one of our accounts down there to ascertain whether the trust

company was keeping its books in a manner which met with my approval under that amendment.

I have personal knowledge as to the nature of the changes in the investments that occurred from time to time from 1913 on, in connection with the trust. I joined in giving directions concerning them. Beginning in 1913, the investments of the trust consisted of shares of stock in corporations. They have never at any time been anything other than shares of stock, except, I think, at times we have had Government bonds and perhaps a few municipals, one block of municipals for a short period. We have no bonds there now and have not had for sometime. I have no personal knowledge as to how the trust company carried the record ownership of those shares of stock up to 1918, I don't really know. I know they probably carried them in one of three ways: I have always urged them to carry them in the name of a nominee, which they are authorized to do, so we can transfer them at will. I have no personal knowledge as to whether the trust company made any changes in the [fol. 139] record title at or about the time of the amendment of 1918. Mr. Waugh is here to testify on that subject.

Redirect examination:

I was not a trustee of the United States Trust Company of New York, until January, 1931. I had nothing to do whatsoever directly or indirectly, with the management of the trusts by the United States Trust Company of New York except as I have indicated in my testimony.

Recross-examination:

The piece of paper handed to me is a copy of a letter which I wrote. I had forgotten that I had written it, but I am glad I did.

(Thereupon said paper was marked for identification as Respondent's Exhibit A.)

"Q. • • • Mr. Wilson, in connection with your participation in directing the trust company as to the investments, did you or did you not give any instructions that investments should be made in undivided interests in the same securities?

"A. So far as I recall, my instructions were uniform. • • •

• • • • • • •

"From and after September 23, 1918, when the amendment to the trust bearing date September 21, 1918, became effective, my recollection is that all of the instructions for [fol. 140] the purchase and sale of stock belonging to the trust, in each case, I directed that the stock sold or purchased was to be taken in an equal number of shares for each of the separate trusts.

"By The Member:

"Q. You mean for each one of the beneficiaries under the trust?

"A. Yes.

"Q. In that way, we get rid of the expression about the three trusts?

"A. Yes; I am merely trying to say it that way. As a matter of fact, the language that I am employing is that before me, and I am quoting from it, where I gave directions to sell 600 shares of common stock of the United States Steel Corporation, and then the quotations is:

" 'Taking the stock so sold in equal shares from the three trusts under said trust indenture using the certificates having the highest cost prices.' "

That was the direction for the sale. The language used in connection with purchases was substantially the same so far as I can recall. It had the same import.

LLOYD A. WAUGH was called as a witness on behalf of the taxpayer, and, being duly sworn, was examined and testified as follows:

Direct examination:

My name is Lloyd A. Waugh. I live in Newark, New Jersey. My business is assistant controller of the United [fol. 141] States Trust Company of New York, the petitioner in this case. I have been with that company for thirteen years. Throughout that time I have been familiar with the details of the administration of the trust or trusts created by the indenture which has been offered in evidence here as Exhibit No. 1, and which includes the original trust indenture of March 12, 1913, and all amendments and also the amendment introduced as Exhibit No. 2. The United

States Trust Company of New York as trustee under that original instrument dated March 12, 1913, as amended from time to time, filed income tax returns during all of the years of its administration of this trust, since its original creation in 1913.

(Certain documents from the files of the Bureau of Internal Revenue were marked taxpayer's Exhibits 4 to 9, inclusive, for identification.)

The documents marked taxpayer's Exhibits 4 to 9, inclusive, for identification, are returns of the United States Trust Company. The United States Trust Company as trustee actually paid the taxes shown to be due by Exhibits 4, 5 and 6 for identification, the returns on Form 1040, for the year 1924.

(Thereupon taxpayer's Exhibits 4 to 9, inclusive, for identification, were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 4 to 9, inclusive. Certain documents from the files of the Bureau of Internal Revenue were marked taxpayer's Exhibits 10 to 15, inclusive, for identification.)

Exhibits 10 to 15, inclusive, are returns filed by the United States Trust Company for the year in question as [fol. 142] they purport to be. They all bear the signature of Mr. Worcester, who was the secretary of the company at that time. The United States Trust Company of New York paid the taxes shown to be due by these returns, 1040, for 1925, marked as Exhibits 10, 11 and 12 for identification.

(Thereupon the documents marked taxpayer's Exhibits 10 to 15, inclusive, for identification, were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 10 to 15, inclusive. Certain documents from the files of the Bureau of Internal Revenue were marked taxpayer's Exhibits 16 to 20, inclusive, for identification. Another document was marked taxpayer's Exhibit 21 for identification.)

Taxpayer's Exhibit 21 for identification is a true copy from the files of the United States Trust Company of the original fiduciary return, 1041, filed by it for the year 1926, for or in the name of Anna W. Dickinson Trust under Deed of John P. Wilson. Exhibits 16 to 21, inclusive, for

identification, are actual returns filed by the United States Trust Company of New York as trustee in those years, with the exception of Exhibit 21, which is a copy of the return, 1041, filed in that year. The United States Trust Company of New York as trustee actually paid the taxes shown to be due by each and all of the returns, 1040, marked Exhibits 16 to 18, inclusive.

(Thereupon taxpayer's Exhibits 16 to 21, inclusive, were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 16 to 21, inclusive. Certain [fol. 143] documents from the files of the Bureau of Internal Revenue were marked taxpayer's Exhibits 22 to 27, inclusive, for identification.)

The documents marked as Exhibits 22 to 27, inclusive, for identification are actual returns filed by the United States Trust Company as trustee for the year 1927. The United States Trust Company as trustee paid the taxes shown to be due on each of the Forms 1040 marked Exhibits 22 to 24, inclusive.

(Thereupon taxpayer's Exhibits 22 to 27, inclusive, for identification were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 22 to 27, inclusive. Certain documents were marked taxpayer's Exhibits 28 to 33, inclusive, for identification. All of these documents, except taxpayer's Exhibit 31 for identification, were from the files of the Bureau of Internal Revenue.)

The document marked Exhibit 31 for identification is a true copy of the original return, 1041, filed by the United States Trust Company as trustee for the year 1928 in the name of John P. Wilson, Jr., Trust under the Deed of John P. Wilson. With the exception of Exhibit 31 for identification, which I have testified is a copy of the original return actually filed, Exhibits 28 to 33, inclusive, for identification were returns actually filed by the United States Trust Company as trustee.

(Thereupon the documents marked taxpayer's Exhibits 28 to 33, inclusive, for identification were offered by counsel for the taxpayer and duly received in evidence as tax-
[fol. 144] payer's Exhibits 28 to 33, inclusive. Certain documents were marked taxpayer's Exhibits 34 to 39, inclusive, for identification. Taxpayer's Exhibits 34, 35, 36,

37 and 38 were from the files of the Bureau of Internal Revenue.)

The documents marked taxpayer's Exhibit 39 for identification is a true copy of the original fiduciary return filed for the year 1929 by the United States Trust Company, in the name of John P. Wilson Trust, under Deed of Trust of John P. Wilson. Each of the documents marked taxpayer's Exhibits 34 to 38, inclusive, are the original returns, 1041 and 1040, filed by the United States Trust Company as trustee for the year 1929. The United States Trust Company of New York as trustee paid the taxes shown to be due by Forms 1040 marked as Exhibits 34, 35 and 36 for identification.

(Thereupon taxpayer's Exhibits 34 to 39, inclusive, were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 34 to 39, inclusive.)

Throughout the period of my employment with the United States Trust Company I have been familiar with the management and administration and the accounts kept of the trust or trusts established by the trust indenture of March 12, 1913 and all amendments thereto. During the years preceding the amendment of September 21, 1918 one account was kept under the heading of "Trust under deed of John P. Wilson for John P. Wilson, Jr., and [fol. 145] others". All the income as collected was credited to this account. After the date of the amendment of September 21, 1918 there was a change in the method of keeping the accounts of the properties held under and pursuant to this trust indenture as thus amended. Three accounts were opened, one in the name of Trust under the Deed of John P. Wilson for John P. Wilson, Jr.; one under the name or heading "Trust under Deed of John P. Wilson for Anna W. Dickinson"; and one under the name of "Trust under Deed of John P. Wilson for Martha Wilson". The income, after this time, was credited to the individual accounts and all transactions affecting the trusts were put through the individual accounts. I mean by individual accounts, separate accounts. The property was divided on our property records, and the income and interest were credited separately. On our records in the office, the only records of property held, what we called our property book, the actual division was made, so that we carried on our

property book three separate accounts of property held, showing the exact number of shares and bonds held in each account. There was no actual physical division of the bonds or other property. It was all kept in our vault. If there was a loss in one account it affected all of the accounts. All the accounts were kept exactly alike. We would not purchase anything on one account without purchasing a like amount in another; nor would we sell in any one account without selling a like amount in the other two accounts. Thus there could not be a loss in a particular account unless it was reflected in the other accounts.

[fol. 146] (Certain documents were marked taxpayer's Exhibits 40 and 41 for identification.)

The documents marked Exhibits 40 and 41 for identification are photostatic copies of the ledger account for the trust under the deed of trust of John P. Wilson in part of the year 1917 and part of the year 1918 from our cash ledger.

(Thereupon the document marked taxpayer's Exhibits 40 and 41 for identification were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 40 and 41.)

With reference to the document marked as Exhibit 41 there appear as the last entry on this document three notations under date of September 27, 1918; one is "Transfer to John P. Wilson, Jr.," and then there is extended under the column marked or headed "Principal" $37.86, and under the column headed "Income" $1,428.00; and the same entries are made with reference to the transfer to Martha Wilson and the transfer to Anna W. Dickinson. These entries mean that at that time, the old trust, the old account, the trust under deed of John P. Wilson, was divided into three parts and three new accounts were opened, and one-third of the cash balance of the principal and one-third of the cash balance of the income were transferred from the old undivided account as we called it, to the three separate accounts. There is a notation with reference to the pages of the new account to which this unified account when split up was carried. The notation with reference to the John P. Wilson share is "DD302". That is the page in the ledger, DD, to which this was transferred. I have brought [fol. 147] with me a photostatic copy of the Page 302 to

which reference is made on Exhibit 41. The document shown me is a photostatic copy of the page showing the transfer noted on Exhibit 41.

(Thereupon said document was marked taxpayer's Exhibit 42 for identification.)

There is a notation as to the page on which the transfer of that part of the account, noted as being transferred to Martha Wilson on Exhibit 41 appears. The page is DD308. The document exhibited to me is a photostatic copy of page DD308.

(Thereupon the document mentioned was marked taxpayer's Exhibit 43 for identification.)

With respect to the portion of this account on Exhibit 41 which was transferred to Anna W. Dickinson, there is a notation showing that it was transferred to page DD314. The document exhibited to me is a photostatic copy of page DD314.

(Thereupon the document mentioned was marked taxpayer's Exhibit 44 for identification, and taxpayer's Exhibits 42, 43 and 44 for identification were offered by counsel for taxpayer and duly received in evidence as taxpayer's Exhibits 42, 43 and 44.)

The places on Exhibits 42, 43 and 44 where the transfers from the old record, Exhibits 40 and 41, are shown are as follows:

In the account for John P. Wilson, Jr., we have a credit transfer from the undivided account to the Principal [fol. 148] of $37.86 and a credit to Income of $1,428.00 on line 1 of the new account. They are the same items which are shown on Exhibit 41 as having been transferred to that account. The same thing is true of Exhibits 43 and 44. The heading of Exhibit 42 is entitled "Trust" and there is a little notation there with a "U" and a line and a "D" which mean "Under Deed", so that the heading reads "Trust under Deed John P. Wilson for John P. Wilson, Jr." Similarly, Exhibit 43 at the head reads "Trust under Deed John P. Wilson for Martha Wilson"; and Exhibit 44 reads "Trust under Deed of John P. Wilson for Anna W. Dickinson". The meaning of the various columns in Exhibits 40 to 44, inclusive, and the entries therein is as follows:

The columns on the left hand side of the account represent—those are the columns headed "Principal"— represent investment of capital funds. Those in the column headed "Income" represent payments from income, either distributions made to the beneficiaries, or the current expenses paid or there may be transfers to Principal right in this account itself, because only a portion of the income of these trusts is paid to the beneficiaries, and the balance is accumulated under the terms of the deed. Those on the right hand side of the account represented in the column headed "Principal" the sale of assets, the realization of cash through the sale of assets, or there may be transfers of income to that account. The "Income" column represents collections of dividends and interest. On the account, that is on these pages, there is also another column which is [fol. 149] headed, "Dep. Int. Paid". The particular significance of that column results from the fact that it is the old form that we have abandoned, that has not been used for several years. Originally, when interest was credited on uninvested funds in an account—in New York, we must pay at least 2% on uninvested trust funds—instead of crediting it on the right hand side in the usual way, it was simply included in the check which was sent to the beneficiaries and a memorandum—that column is used as a memorandum of the amount of such interest as it was included in the remittance check. It really was a memorandum of this credit for interest on uninvested principal. With reference to the second entry appearing on Exhibit 43 at the left, it reads "October 14, 33⅓ shares General Electric at $144.75", and extended on the right under the column headed "Principal" $4,829.16. That entry purports to show the purchase of 33⅓ shares of General Electric at $144.75 and commissions for which payment was made of $4,829.16 made on account of the Trust under Deed of John P. Wilson for Martha Wilson. There is a similar entry on Exhibit 42 in the corresponding place for the Trust under Deed of John P. Wilson for John P. Wilson, Jr., and similarly with respect to Exhibit 44 which is the Trust under Deed of John P. Wilson for Anna W. Dickinson, and so entitled.

(Thereupon certain documents were marked taxpayer's Exhibits 45, 46 and 47 for identification.)

[fol. 150] The documents marked taxpayer's Exhibits 45, 46 and 47 for identification are photostatic copies of our ledger accounts of those various trusts for the period beginning October, 1923, and extending down to November, 1924. The columns shown on those sheets and the various entries shown thereon were made for the purpose of representing transactions similar to those as to which I have testified with regard to Exhibits 40, 41, 42, 43 and 44.

(Thereupon taxpayer's Exhibits 45, 46 and 47 for identification were offered in evidence by counsel for taxpayer and were duly received in evidence as taxpayer's Exhibits 45, 46 and 47.)

Since 1924 the United States Trust Company has changed the form of the ledger used. The documents now exhibited to me are photostatic copies of the ledger we now use, a loose-leaf form of ledger, covering transactions under the deed of John P. Wilson for John P. Wilson, Jr., for the period October, 1928, down to and including December 31, 1929. Except for the change in form which is apparent from the photostatic copies, the columns shown on these two sheets now exhibited to me purport to represent the same character and kind of transactions as I have testified to with respect to similarly located columns in the other forms of our books.

(Thereupon the documents mentioned were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 48 and 49.)

[fol. 151] The sheets now exhibited to me are similar to the ones dealing with the trust of John P. Wilson, Jr., covering the same period, viz., October, 1928, to December 31, 1929.

(Thereupon the documents mentioned were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibits 50 to 53, inclusive.)

The records showing transactions similar to those indicated by the exhibits introduced, which were kept by the United States Trust Company throughout the period from 1924 through the end of 1929, were kept in a similar manner to the transactions shown by said exhibits. The United States Trust Company makes a report to the beneficiaries

under this trust or these trusts every month. I have brought with me from the records of the United States Trust Company a carbon copy of certain of the reports so made. A separate report is made for each of the three accounts or trusts. The three documents exhibited to me are carbon copies of the reports rendered, one to Martha Wilson Trust, and to Anna W. Dickinson and the other to John P. Wilson, Jr., as of July 31st and covering the month of July, 1924.

(Thereupon said documents were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibit 54.)

The originals of those documents were actually sent to the living beneficiaries under those accounts. The three documents now exhibited to me are carbon copies of state-
[fol. 152] ments sent to the beneficiaries for the month of February, 1929.

(Thereupon said documents were offered by counsel for the taxpayer and duly received in evidence as taxpayer's Exhibit 55.)

The documents mentioned are typical of the monthly reports made throughout the years 1924 to 1929 in these accounts.

Cross-examination:

Exhibits 54 and 55 are substantially just copies from the ledger, representing the income and disbursements in the income account, and the investment and receipts in the principal account. They are taken right from our ledger. At the end of the month, the clerical force of the United States Trust Company has instructions to prepare a copy of the ledger account for that month and the copy is mailed to the beneficiaries of the trust, John P. Wilson, Jr., and Anna W. Dickinson. In 1924 we mailed the original of the account headed "Under deed of John P. Wilson for Martha Wilson" to the present John P. Wilson and his sister, Anna W. Dickinson, beneficiaries of that trust now. It was addressed to Anna W. Dickinson and it may have been sent to California or it may have been sent to Chicago in care of John P. Wilson, I am not sure which. I should not like to testify positively that from 1924 to 1929 all three state-

ments were mailed to John P. Wilson in Chicago. If they are they are sent to Anna W. Dickinson in care of John P. [fol. 153] Wilson because her business address on our files is in care of John P. Wilson. There are three reports each month. Of course, that headed "Under Deed of John P. Wilson for John P. Wilson, Jr." was mailed to John P. Wilson, Jr., in Chicago. The one headed "Under Deed of John P. Wilson for Anna W. Dickinson" is sent to Anna W. Dickinson, whether to her California address or in care of John P. Wilson in Chicago, I am not positive. I would not say positively where the original of the one headed "Under Deed of John P. Wilson for Martha Wilson" was mailed. These reports, which were mailed monthly, purport to cover the entire cash receipts and cash disbursements in these three accounts for the period to which they relate. One column of them relates to what was treated on the books of the trust company as income or expenses or disbursements to the beneficiaries and the other column relates to the receipts and disbursements in the principal account.

It is a fact that during the period from 1924 to 1929, John P. Wilson, Jr., and Anna W. Dickinson filed with the trust company certain instructions as to the distribution or accumulation of income under these three accounts. We get instructions only in case they want to change the amount of monthly remittances. For instance, if they give us directions to pay a certain sum per month, we continue to do it, and expect no authorization until they change that. I believe I have with me the original or a copy of instructions of that nature. Here is a direction in 1914 signed by Martha Wilson, Anna W. Dickinson and John P. Wilson, [fol. 154] Jr. The substance of that document is that all the income from and after the date of the directions shall be paid to John P. Wilson, Jr., as agent for, and for the mutual benefit of these three beneficiaries. The instructions under which we are now operating do not provide for the payment of any amount to John J. Wilson, Jr., as agent. It now provides for separate checks. For the early part of the period 1924 to 1929 we made the payments to John P. Wilson, Jr., as agent, pursuant to written instructions on file with the trust company. In December, 1924, we were paying the income directly to the beneficiaries then alive—Mrs. Dickinson and Mr. Wilson, and from then on the direct

record indicates that income was paid directly to those people. Under the instructions prevailing prior to 1924 as to sending the distributable income to John P. Wilson as agent for the three—or two, after the death of Martha Wilson—separate checks were sent to John P. Wilson. I mean three checks prior to the death of Martha Wilson and two checks thereafter. They have to be posted that way in the ledger and three separate checks would be drawn. Examination of the books and records prior to 1918 indicates that while the account was a single account, those payments were made to John P. Wilson as agent in one single check. I should like to make it clear that, through the whole period from 1914 to 1918—through that whole period, it does not necessarily follow that these payments were made to John P. Wilson as agent through the whole period. I am not testifying as to that. Since only a portion of this in- [fol. 155] come is paid and the balance is accumulated, they have very often in those early days bought securities and paid for them out of the income of the trust. Now this money that was sent to John P. Wilson as agent was not for himself at all, as I understand it, but it was to reimburse him, to pay him, for securities he had bought in Chicago and sent on here for the account of the trust. I should say it was a remittance of income, a remittance of cash to cover the purchases made for the account of the trust. The letter of 1914 to which I have referred purports to cover the distribution of income. The income is merely capitalized income; that is all which they had coming from the beginning of these trusts. In a great many cases the securities were sent in by the beneficiaries before there was money in the trust to pay for them, to take them up. They were bought in Chicago and sent on here and we were asked to take them and hold them and to pay for them when the funds were available, so that, in a great many cases we remitted direct instead of transferring on our ledger from income to principal which, as you see, in all of the later years we have done consistently. In those past years we did not necessarily go through that routine of transferring from income to principal and then making these payments out of principal, but it seems to me that is the same thing exactly; we were capitalizing the income.

It is true that throughout the years 1924 to 1929, inclusive, a portion of the income from the stocks, that is, the

dividends from the stocks held under this deed of trust of [fol. 156] John P. Wilson dated March 12, 1913, as amended, was actually distributed to John P. Wilson, Jr., and to Anna W. Dickinson. It is also true that the remaining portion of the income from these stocks and what other property may have been held, was treated as accumulations and added to the principal—I don't like to use the word "trust" or "trusts", but whatever it is, whether there was one trust or three, it was added to principal. So far as those accumulations are concerned, they were in the form of cash; they were reinvested from time to time in other securities.

In regard to those securities that were sent on from Chicago, those securities represented investments made in anticipation of the time when the trust would have an accumulation of cash income and those investments relate to this accumulation and not to the distributable dividends, and when a situation of that kind occurred, and we made remittances to John P. Wilson to cover such investments, the trust company did not treat those remittances as distributions of income to John P. Wilson. It was simply reimbursement for advances made.

I was not with the United States Trust Company in 1918. I have examined the stocks and other properties which may have been held under this deed of trust as amended since I went with the company. The record titles of those stocks were carried in 1918 in two different ways. Some of them or probably the majority of them at that time were carried in the name of the United States Trust Company, Trustees under Deed of John P. Wilson. Some of them were carried [fol. 157] in the name of our own nominee. Today more of them are carried in the name of our nominee than the other way. Generally speaking, the shares of a particular corporation were carried in several certificates, not in equal one-thirds but in round amounts. They generally had pretty large holdings in almost anything that they had and we had mostly one-hundred-share certificates. In the majority of instances back at that time the record title to all those certificates was in the name of United States Trust Company of New York, Trustee under the Deed of Trust of John P. Wilson. At the time of the first amendment to the trust in September, 1918, those certificates were not surrendered to the various corporations and new certificates issued.

Generally speaking, as new investments have been made from time to time since 1918 the record titles to those certificates have been made out to the United States Trust Company, Trustee under the Deed of John P. Wilson; but a number of them, and an increasing number of them, are held in the name of our own nominee. The first item appearing on Exhibit 54 show- a purchase of 50 shares of United States Steel common on July 17, 1924. I should say that those shares were taken in one certificate and not in three certificates for 16⅔ shares each. We undoubtedly had an order in here to buy, and on the first lot that came in, which was a little different price, we could not give that to any one trust so we apportioned them equally to the three trusts without dividing the certificate, and making the entries on the three accounts show exactly one-third of the [fol. 158] number of shares represented by the particular purchase. In making a purchase of that kind the trust company would issue one check to the seller for the entire 50 shares and not three checks for one-third each.

During the period from 1924 to 1929 the trust department of the trust company, from the standpoint of banking, handled the cash which it had on hand for the various trusts which it was administering at that time not in separate bank accounts for each trust—I mean not only the Wilson trust but all of the trusts administered by the trust company—in one bank account. That account was carried, in our particular case, with the Bank of Manhattan Company. No separate account is maintained for the Wilson trust. The only records of the cash then, so far as the individual trusts are concerned, are these ledger accounts to which I have testified.

The actual certificates of stock held in trust under this trust deed as amended—were kept during these years in our own vault. There was a separate compartment of that vault maintained for the Wilson trust as distinguished from the other trusts which the trust company may have been administering at that time. Each trust has its own separate file. One file was kept for the properties under this deed of trust.

"Q. Now, was there any written record kept of the certificates themselves, or on any envelope in which they may have been contained, indicating any undivided one-third of the certificates belonging to John P. Wilson, Jr., trust, the

[fol. 159] Anna W. Dickinson trust, or the Martha Wilson trust?

"A. I shall have to testify that, as to the certificates themselves, no.

"Q. I mean, any papers contained in this vault?

"A. Yes, absolutely. Our own records, our own vault records, show how those certificates are apportioned on our property books. They must tie up with our property record."

The vault record must agree with our property book record, must show exactly how many shares are held of each security, under whose name, to prove against the property books. They prove them every month. The vault record is a record that those in charge of the vault must keep and prove against the property records, which are kept in another part of the building altogether, and in effect that is substantially a duplication of the property record. The property record kept in the trust department during these years was a large volume or a number of large volumes which show the holdings of each trust. There was not kept a separate volume for the Wilson trust or trusts. That fell under the W book. The record was in one property account in an appropriate book of the trust departments. The property account lists each security and describes it, at least the number of shares. There is no record kept of the certificate numbers in the property book. There is in the vault record but not in the property book.

In 1918 the balances, or the totals rather, of each of the securities held at that time were transferred to the new [fol. 160] sheets. I do not have with me a sample of the new sheets that were opened in 1918. The trust deed shows that the trust company received 520 shares of the capital stock of General Electric Company in 1913, which were still held in 1918. The property record for those 520 shares of General Electric stock was changed in 1918 as follows:

The property record has three columns. One of them is headed "Charges, credit balance." The 520 shares of General Electric would be carried at $52,000.00 out in the balance column and then in 1918, when the changes were made, $17,333.00 would be in the "Charges" column and out in the explanation column we would say, "173⅓ shares transferred to the trust company" and so on, and that would be repeated three times in it, which would balance that particular

item out entirely. That is exactly the way all the property that was held in the old undivided trust was transferred out and three new sheets were opened and each one of them was charged with 173⅓ shares or $17,333.00 of the General Electric stock and the same method was applied to all of the other securities held or reflected in the property account at that time. I do not know whether any change was made in 1918 in our vault records. There would be no occasion for any in and out vault record. The vault record is in sheet form, except there is a card form, too. It is in the nature of a card record but is on thin sheets. At the present time as regards 1,000 shares of General Electric stock, the vault record would merely show 333⅓ shares held in the trust under deed of John P. Wilson for John P. Wilson, Jr., 333⅓ shares for Anna W. Dickinson trust, and 333⅓ shares for [fol. 161] the Martha Wilson trust. All those three items would be recorded on one sheet.

In connection with keeping the records of the trust company alphabetically, it has been its practice generally in connection with all trusts to select the letter in the name of the creator of the trust, that is, the records are filed in the name of the creator, so that, assuming that the taxpayer's contention is correct and there were three separate trusts, the arrangement alphabetically conforms to the usual and customary practice of the trust company in all cases.

During the years 1924 to 1929, inclusive, the property records of the trust company with respect to the securities held under this deed of trust as amended, disclose that exactly one-third was applicable in all instances to each trust. Substantially all of the properties consisted of shares of stock in corporations during those years. We did at one time hold a few municipal bonds. But even in the case where we held municipal bonds, the property records also showed that they were held exactly one-third for each account. When dividends were received on these various stocks, if the stocks were registered in the name of the trustee, one check in all cases was obtained, as in all cases of trust holdings, where we hold more than one stock, but when the stock is held as a nominee, then sometimes we get a tremendous sized check which we have simply got to split up and allocate. If the stock is held in the name of a nominee it might be applicable to not only the Wilson trust but other trusts as well. When a dividend came in directly from the company's own stock standing in the name of the trust company as trustee

[fol. 162] the amounts of these checks are credited in exactly equal amounts with the exception of fractions of cents to these three accounts. The amounts of bond coupons would be credited exactly one-third to each account, with the exception of fractions of cents.

"Q. Now, in addition to such items, the trust company received, from time to time, amounts which, for income tax purposes are income in the sense of being profits on the disposition of property, but which, for trust purposes, under the deed of trust, were treated as principal. How, in such cases, were the proceeds of such sales handled in respect to being divided exactly or otherwise?

"A. They were divided exactly in three parts and credited to the three separate trusts."

Under the head of disbursements—the disbursements consist of distributions of distributable income and investments and expenses. In the case of expenses, they consist in part of commissions to the trust company and the other expenses relate largely to transfer stamps and things of that kind. In the case of transfer stamps and things relating to the disposition or acquisition of property, they were divided and charged exactly equal to each account. Even the telegraph charges were split. The commissions were figured separately on each trust but the income of one trust is identical with the other. The commissions are a percentage of the income. Disbursements by way of investment in new assets were treated exactly equal in each account. Distributions of [fol. 163] distributable income were made under the terms of the trust deed as amended pursuant to instructions filed with the trust company from time to time. I have none of those instructions here later than 1914. The instructions were very explicit that distributions should be made in exactly equal amounts from each of these three in the accumulation for each period being exactly *in the accumulation for each period being exactly* equal in each account. They vary slightly if at all. Now, once upon a time I remember we had a little refund due from the United States Government on income taxes, and we took it in one or two accounts and waited a long time to get it into the other, which threw them out of line, but that did not amount to anything. Such little things as that will not throw them out of line much. That relates to years prior to those before the Board in this proceeding. During the long period of years that these ac-

counts have covered it is true that a variation has resulted from the fractions of a cent we treated in the various transactions.

Redirect examination:

Although I have no record of them here, we did receive some instructions from the living beneficiaries of this trust or trusts with regard to the payment of income from time to time. We have received many directions since the one that I have testified to here for 1914. All of the cash held by the trust company as trustee for all its trust estates was kept in one deposit in the Bank of Manhattan Company and there [fol. 164] is no separation so far as the books of that bank are concerned between it and all of the other trusts which really own funds; they are amalgamated and deposited in one account with that bank. In every respect the account of the Wilson trust or trusts is treated exactly the same as all the other trusts managed by the United States Trust Company. The United States Trust Company is trustee of a large number of trusts. The United States Trust Company is trustee of thousands of trusts. In all cases equal charges were made to each of these accounts, or separate trusts, whenever investments were made on the accounts—made specifically in accordance with directions given by the beneficiary of the trust or trusts.

(The letter previously marked Commissioner's Exhibit A for identification was offered by counsel for taxpayer and duly received in evidence as taxpayer's Exhibit 56.)

So far as pertinent and material, Exhibits 4 to 56 are as follows:

EXHIBIT 4

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1925. It is stamped received, Collector of Internal Revenue, Second District of New York, March 14, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 165] Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1924

United States Trust Company of New York, Trustee, Estate of John P. Wilson for Remainder Interests after John P. Wilson, Jr.

Income

Dividends on Stock of Domestic Corporations	$39,575.61
Total Income in Items 1 to 9	39,575.61
Deductions	—0—
Net Income	$39,575.61
Total tax	1,984.83

EXHIBIT 5

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1925. It is stamped received, Collector of Internal Revenue, Second District of New York, March 14, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 166] Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1924

United States Trust Company of New York, Trustee Anna W. Dickinson Trust under Deed of John P. Wilson

Income

Dividends on Stock of Domestic Corporations	$39,575.65
Total Income in Items 1 to 9	39,575.65
Deductions	—0—
Net Income	$39,575.65
Total Tax	1,984.84

Exhibit 6

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1925. It is stamped received, Collector of Internal Revenue, Second District of New York, March 14, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 167] Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1924

United States Trust Company of New York, Trustee
Martha Wilson Trust under deed of John P. Wilson

Income

Dividends on Stock of Domestic Corporations	$39,575.68
Total Income in Items 1 to 9	39,575.68
Deductions	—0—
Net Income	$39,575.68
Total tax	$1,984.84

Exhibit Seven

(Condensed)

This document was subscribed and sworn to by Charles A. Edwards, Assistant Secretary of the United States Trust Company of New York, on March 11, 1925. It is stamped received, Collector of Internal Revenue, Second District of New York, March 16, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 168] Form 1041
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1924

Martha Wilson Trust under Deed of John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages and Corporation Bonds	$ 76.08	
Dividends on Stock of Domestic Corporations	64,166.10	
Total Income in Items 1 to 7		$64,242.18

Deductions

Other Deductions	$ 666.50	
Total Deductions		666.50
Net Income		$63,575.68

[fol. 169] Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends Attributable to 1924
John P. Wilson, Jr.	$12,000.00
Anna W. Dickinson	12,000.00
United States Trust Company of New York, Held for Accumulation and added to the principal under the terms and provisions of the trust	39,575.68
Total	$63,575.68

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$666.50

Exhibit Eight

(Condensed)

This document was subscribed and sworn to by Charles A. Edwards, Assistant Secretary of the United States Trust Company of New York, on March 11, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 170] Form 1041
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1924

Anna W. Dickinson Trust under Deed of John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 76.08	
Dividends on Stock of Domestic Corporations	64,166.07	
Total Income		$64,242.15

Deductions

Other Deductions	$ 666.50	
Total Deductions		666.50
Net Income		$63,575.65

[fol. 171] Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends Attributable to 1924
Anna W. Dickinson	$24,000.00
United States Trust Company of New York, Held for Accumulation and added to principal under the terms and provisions of the trust	39,575.65
Total	$63,575.65

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$ 666.50

EXHIBIT NINE

(Condensed)

This document was subscribed and sworn to by Charles A. Edwards, Assistant Secretary of the United States Trust Company of New York, on March 11, 1925. It is stamped received, Collector of Internal Revenue, Second District of New York, March 16, 1925. Omitting the affidavit, the material portions of this document are as follows:

[fol. 172] Form 1041
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1924

John P. Wilson, Jr., Trust under Deed of John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 76.08	
Dividends on Stock of Domestic Corporations	64,166.03	
Total Income		$64,242.11

Deductions

Other Deductions	$666.50	
Total Deductions		666.50
Net Income		$63,575.61

[fol. 173] Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends Attributable to 1924
John P. Wilson, Jr.	$24,000.00
United States Trust Company of New York, Held for Accumulation and added to Principal under the terms and provisions of the trust	39,575.61
Total	$63,575.61

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$666.50

EXHIBIT TEN

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 9, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

[fol. 174] Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1925

United States Trust Company of New York, Trustee Estate John P. Wilson for Remainder Interests after John P. Wilson, Jr.

Income

Dividends on stock of domestic corporations from U. S. Trust Co., Trustee	$35,442.79
Total Income	$35,442.79
Deductions	—0—
Net Income	$35,442.79

Computation of Tax

Tax on Net Income	$1,349.85
Adjustment for Capital Gain or Loss (12½% of Schedule D)	3,794.17
Total Tax	$5,144.02

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount received	Cost	Net gain
Stock	1913/21	1925	$47,519.96	$17,166.60	$30,353.36

[fol. 175] EXHIBIT ELEVEN

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 9, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1925

United States Trust Company of New York, Trustee Estate of John P. Wilson for Remainder Interests after Anna W. Dickinson

Income

Dividends on stock of domestic corporations from U. S. Trust Co., Trustee	$35,444.12
Total Income	$35,444.12
Deductions	—0—
Net Income	$35,444.12

[fol. 176] Computation of Tax

Tax on net income	$1,349.97
Adjustment for capital gain or loss (12½% of Schedule D)	3,794.18
Total tax	$5,144.15

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More than Two Years

Kind of Property	Date Acquired	Date Sold	Amount received	Cost	Net gain
Stock	1913/21	1925	$47,520.01	$17,166.60	$30,353.41

Exhibit Twelve

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 9, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

[fol. 177] Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1925

United States Trust Company of New York, Trustee Estate John P. Wilson for Remainder Interests after Martha Wilson

Income

Dividends on stock of domestic corporations from U. S. Trust Co., Trustee	$35,444.07
Total Income	$35,444.07
Deductions	—0—
Net Income	$35,444.07

Computation of Tax

Tax on Net Income	$1,349.97
Adjustment for capital gain or loss (12½% of Schedule D)	3,794.22
Total tax	$5,144.19

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain
Stock	1913/21	1925	$47,520.33	$17,166.60	$30,353.73

[fol. 178] EXHIBIT 13

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 5, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1041

U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1925

John P. Wilson, Jr., Trust, under Deed John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$108.40	
Dividends on Stock of Domestic Corporations	73,236.49	
Total Income		$73,344.89

[fol. 179] Deductions

Contributions (Explain in Schedule E)	$8,333.33	
Other Deductions Authorized by Law (Explain in Schedule E)	768.77	
Total Deductions		9,102.10
Net Income		$64,242.79

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$28,800.00
United States Trust Company of New York, Held for Accumulation and added to Principal under the terms and provisions of the trust	35,442.79
Total	$64,242.79

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$768.77
Smith College pursuant to terms of Deed of Trust	8,333.33

[fol. 180] EXHIBIT 14

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 5, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1925

Anna W. Dickinson Trust under Deed John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$108.39	
Dividends on Stock of Domestic Corporations	73,236.57	
Total Income		$73,344.96

[fol. 181] **Deductions**

Contributions (explain in Schedule E)	$8,333.33	
Other Deductions Authorized by Law (explain in Schedule E)	767.51	
Total Deductions		9,100.84
Net Income		$64,244.12

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
Anna W. Dickinson	$28,800.00
United States Trust Company of New York, Held for Accumulation and added to Principal under the terms and provisions of the Trust	35,444.12
Total	$64,244.12

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$767.51
Smith College pursuant to Terms of deed of Trust	8,333.33

[fol. 182] EXHIBIT 15

(Condensed)

This document bas subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 5, 1926. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1925

Martha Wilson Trust under Deed J. an P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$108.39	
Dividends on Stock of Domestic Corporations	73,236.54	
Total Income		$73,344.93

[fol. 183]

Deductions

Contributions (explain in Schedule E)	$8,333.34	
Other Deductions Authorized by law (explain in Schedule E)	767.52	
Total Deductions		9,100.86
Net Income		$64,244.07

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$14,400.00
Anna W. Dickinson	14,400.00
United States Trust Company of New York, Held for Accumulation and added to Principal under the terms and provisions of the trust	35,444.07
Total	$64,244.07

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$767.52
Smith College pursuant to terms of Deed of Trust	8,333.34

[fol. 184] EXHIBIT 16

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1927. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1926

United States Trust Company of New York, Trustee under Deed of John P. Wilson (John P. Wilson, Jr., Trust)

Income

Profit from Sale of Real Estate, Stocks, Bonds, etc. (from Schedule C)	$29.55	
Dividends on Stock of Domestic Corporations	40,115.44	
Total Income		$40,144.99

[fol. 185]

Deductions

Other Deductions Transfer tax stamps	21.72
Net Income	$40,123.27

Computation of Tax

Tax on Net Income	$1,813.56
Adjustment for Capital Gain or Loss (12½% of Schedule D)	3,762.85
Total tax	$5,576.41

Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Acquired	Received	Cost	Profit
Bonds	1926	$9,421.25	$9,391.70	$29.55

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of property	Date acquired	Amount received	Cost	Net gain
Stock	1913/1923	$56,347.25	$26,244.48	$30,102.77
			12½% =	$ 3,762.85

[fol. 186] EXHIBIT 17

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1927. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1926

United States Trust Company of New York, Trustee under Deed John P. Wilson (Anna W. Dickinson Trust)

Income

Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	$29.55	
Dividends on Stock of Domestic Corporations	40,090.35	
Total Income		$40,119.90

[fol. 187] Deductions

Other Deductions, Transfer tax stamps	21.71
Net Income	$40,098.19

Computation of Tax

Tax on Net Income	$1,810.80
Adjustment for Capital Gain or Loss (12½% of Schedule D)	3,762.56
Total tax	$5,573.36

Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of property	Date acquired	Amount received	Cost	Net gain
Bonds	1925	$9,421.25	$9,391.70	$29.55

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind if Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks	1913/1923	$56,344.98	$26,244.48	$30,100.50
			12½% =	3,762.56

[fol. 188] EXHIBIT 18

(Condensed).

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 10, 1927. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue.

Individual Income Tax Return for Calendar Year 1926

United States Trust Company of New York, Trustee under Deed John P. Wilson (Martha Wilson Trust)

Income

Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	$29.55	
Dividends on Stock of Domestic Corporations	40,114.18	
Total Income		$40,143.73

[fol. 189] **Deductions**

Other Deductions Transfer tax stamps	21.73
Net Income	$40,122.00

Computation of Tax

Tax on Net Income	$1,813.42
Adjustment for Capital Gain or Loss (12½% of Schedule D)	3,762.56
Total tax	$5,575.98

Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of property	Date acquired	Amount received	Cost	Net profit
Bonds	1925	$9,421.25	$9,391.70	$29.55

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of property	Date acquired	Amount received	Cost	Net gain
Stocks	1913/1923	$56,344.97	$26,244.48	$30,100.49
			12½% =	3,762.56

[fol. 190] **Exhibit 19**

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1927. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1041.
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1926

John P. Wilson, Jr., Trust under the Deed of John P. Wilson United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$386.26	
Dividends on Stock of Domestic Corporations	87,192.97	
Total Income		$87,579.23

[fol. 191]

Deductions

Contributions (Explain in Schedule E)	8,333.32	
Other Deductions Authorized by Law (Explain in Schedule E)	855.90	
Total Deductions		9,189.22
Net Income		$78,390.01

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$38,274.57
United States Trust Company of New York, Held for accumulation and added to the principal under the terms and provisions of the trust	40,115.44
Total	78,390.01

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$855.90
Smith College	8,333.32

[fol. 192] EXHIBIT 20

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1927. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1041.
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1926

Martha Wilson Trust under the Deed of John P. Wilson, United States Trust Company of New York

Income		
Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$384.93	
Dividends on Stock of Domestic Corporations	87,193.05	
Total Income		$87,577.98

[fol. 193]

Deductions		
Contributions (Explain in Schedule E)	$8,333.35	
Other Deductions Authorized by law (Explain in Schedule E)	855.89	
Total Deductions		9,189.24
Net Income		$78,388.74

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$19,137.28
Anna W. Dickinson	19,137.28
United States Trust Company of New York, Held for accumulation and added to principal under the terms and provisions of the trust	40,114.18
Total	$78,388.74

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$855.89
Smith College	8,333.35

[fol. 194] EXHIBIT 21

(Condensed)

The material portion of this document are as follows:

Form 1041.
U. S. Internal Revenue.

Fiduciary Return of Income for Calendar Year 1926

Anna W. Dickinson Trust under Deed of John P. Wilson, United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$360.82	
Dividends on Stock of Domestic Corporation	87,193.08	
Total Income		$87,553.90

Deductions

Contributions (Explain in Schedule E)	$8,333.33	
Other Deductions Authorized by law (Explain in Schedule E)	855.65	
Total Deductions		9,188.98
Net Income		$78,364.92

[fol. 195] Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
Anna W. Dickinson	$38,274.57
United States Trust Company of New York, Held for accumulation and added to principal under the terms and provisions of the trust	40,090.35
Total	$78,364.92

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$855.65
Smith College	8,333.33

EXHIBIT 22.

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

[fol. 196] Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1927

United States Trust Company of New York Trustee under deed of John P. Wilson—John P. Wilson, Jr., Trust

Income

Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	$121.25	
Dividends on Stock of Domestic Corporations	61,152.43	
Total Income		$61,273.68

Deductions

Other Deductions Transfer tax stamps	26.67
Net Income	$61,247.01

Computation of Tax

Tax on Net Income	$4,599.52
Adjustment for Capital Gain or Loss (12½% of Schedule D)	221.45
Total tax	$4,820.97

[fol. 197] Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of property	Date acquired	Amount received	Cost	Net profit
Bonds	Dec. 1925—Jan. 1926	$3,140.00	$3,018.75	$121.25

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain
Stock	1916	1927	$24,223.67	$22,462.10	$1,771.57
				12½% =	$221.45

Exhibit 23.

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

[fol. 198] Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1927

United States Trust Company of New York, Trustee under the deed of John P. Wilson—Anna W. Dickinson Trust

Income		
Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	$121.25	
Dividends on Stock of Domestic Corporations (See Form 1041 this trust)	61,180.78	
Total Income		$61,302.03
Deductions		
Other Deductions Transfer tax stamps		26.67
Net Income		$61,257.36
Computation of Tax		
Tax on Net Income		$4,604.06
Adjustment for Capital Gain or Loss (12½% of Schedule D)		221.45
Total tax		$4,825.51

[fol. 199] Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, etc.

Kind of property	Date acquired	Amount received	Cost	Net profit
Bonds	Dec. 1925—Jan. 1926	$3,140.00	$3,018.75	$121.25

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain
Stocks	1916	1927	$24,233.67	$22,462.10	$1,771.57
				12½% =	$221.45

EXHIBIT 24

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

[fol. 200] Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1927

United States Trust Company of New York, Trustee under deed of John P. Wilson (Martha Wilson Trust)

Income

Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	$121.25	
Dividends on Stock of Domestic Corporations (See Form 1041 this trust)	61,152.57	
Total Income		$61,273.82

Deductions

Other Deductions Transfer tax stamps	26.66
Net Income	$61,247.16

Computation of Tax

Tax on Net Income	$4,599.55
Adjustment for Capital Gain or Loss (12½% of Schedule D)	221.45
Total tax	$4,821.00

[fol. 201] Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of property	Date acquired	Amount received	Cost	Net profit
Bonds	Dec.1925—Jan. 1926	$3,140.00	$3,018.75	$121.25

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More than Two Years

Kind of Property	Date Acquired	Date Sold	Amount received	Cost	Net gain
Stock	1916	1927	$24,233.67	$22,462.10	$1,771.57
				12½% =	$ 221.45

EXHIBIT 25

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

[fol. 202] Fiduciary Return of Income for Calendar Year 1927

Form 1041
U. S. Internal Revenue

John P. Wilson, Jr., Trust under the deed of John P. Wilson
United States Trust Company of New York

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$138.99	
Dividends on Stock of Domestic Corporations	107,518.51	
Total Income		$107,657.50
Deductions		
Other Deductions Authorized by Law (Explain in Schedule E)		1,018.83
Net Income		$106,638.67

[fol. 203] Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$45,486.24
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	61,152.43
Total	$106,638.67

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,018.83

Exhibit 26

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

[fol. 204] Form 1041
U. S. Internal Revenue

Fiduciary Return of Income for Calendar Year 1927

Under deed John P. Wilson (Anna W. Dickinson Trust)
United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$167.76	
Dividends on Stock of Domestic Corporations	107,518.74	
Total Income		$107,686.50

Deductions

Other Deductions Authorized by Law (Explain in Schedule E)	1,019.46
Net Income	$106,667.04

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
Anna W. Dickinson	$45,486.26
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	61,180.78
Total	$106,667.04

[fol. 205] Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,019.46

EXHIBIT 27

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 2, 1928. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

Fiduciary Return of Income for Calendar Year 1927

Under deed of John P. Wilson (Martha Wilson Trust)
United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$138.97	
Dividends on Stock of Domestic Corporations	107,518.65	
Total Income		$107,657.62

[fol. 206] Deductions

Other Deductions Authorized by Law (Explain in Schedule E)	1,018.83
Net Income	$106,638.79

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$22,743.11
Anna W. Dickinson	22,743.11
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	61,152.57
Total	$106,638.79

Schedule E—Explanation of Deductions.

Commission and expenses of fiduciary	$1,018.83

EXHIBIT 28

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 4, 1929. It is stamped received, [fol. 207] Collector of Internal Revenue, Second District of New York, March 15, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1928

United States Trust Company of New York, Trustee under deed of John P. Wilson, John P. Wilson, Jr., Trust

Income

Dividends on Stock of Domestic Corporations (see Form 1041 for this trust)	$56,622.68	
Total Income		$56,622.68
Deductions		—0—
Net Income		$56,622.68

Computation of Tax

Tax on Net Income	$3,893.40
Adjustment for Capital Gain or Loss (12½% of Schedule D)	6,142.46
Total tax	$10,035.86

[fol. 208] Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain or loss
Stock	1917–18	1928	$68,486.51	$15,711.02	$52,775.49
N. Y. City 4¼% 1960	1/1/26	4/17/28	4,533.75	4,360.41	173.34
Amer. Car & Fdy. Com.	1/15/26	10/24/28	15,126.67	18,875.00	3,748.33
Total					$49,200.50
Less Transfer tax stamps					60.85
					$49,139.65

Exhibit 29

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 4, 1929. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1928

United States Trust Company, Trustee under the deed of John P. Wilson (Anna W. Dickinson Trust)

[fol. 209] Income

Dividends on Stock of Domestic Corporations (see Form 1041 for this trust)	$56,622.37	
Total Income		$56.622.37
Deductions		—0—
Net Income		$56,622.37

Computation of Tax

Tax on Net Income	$ 3,893.36
Adjustment for Capital Gain or Loss (12½% of Schedule D)	6,142.45
Total tax	$10,035.81

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain or loss
Stock	1917–1918	1928	$68,486.51	$15,711.02	$52,775.49
N. Y. City 4¼% 1960	1/1/26	4/17/28	4,533.75	4,360.41	173.34
Amer. Car & Fdy. Com.	1/15/26	10/24/28	15,126.66	18,875.00	3,748.34
Total					$49,200.49
Less Transfer Tax Stamps					60.88
					$49,139.61

[fol. 210] EXHIBIT 30

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 4, 1929. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1928

United States Trust Company of New York, Trustee under deed of John P. Wilson (Martha Wilson Trust)

Income

Dividends on Stock of Domestic Corporations (see Form 1041 for this trust)	$56,622.79	
Total Income		$56,622.79
Deductions		—0—
Net Income		$56,622.79

Computation of Tax

Tax on Net Income	$ 3,893.42
Adjustment for Capital Gain or Loss (12½% of Schedule D)	6,142.46
Total tax	$10,035.88

[fol. 211] Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain or loss
Stock	1917–18	1928	$68,486.50	$15,711.02	$52,775.48
N. Y. City 4¼% 1960	1/1/26	4/17/28	4,533.75	4,360.41	173.34
Amer. Car & Fdy. Com.	1/15/26	10/24/28	15,126.67	18,875.00	3,748.33
Total					$49,200.49
Less Transfer Stamps					60.85
					$49,139.64

Exhibit 31

(Condensed)

The material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

Fiduciary Return of Income for Calendar Year 1928

John P. Wilson, Jr., Trust under the deed of John P. Wilson United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 156.98	
Dividends on Stock of Domestic Corporations	116,846.02	
Total Income		$117,003.00

[fol. 212] Deductions

Interest paid	$ 491.76	
Contributions (Explain in Schedule E)	8,333.33	
Other Deductions Authorized by Law (Explain in Schedule E)	1,209.47	10,034.56
Net Income		$106,968.44

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Percentage of Beneficial Interest	Dividends
John P. Wilson	47.066	$50,345.76
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	52.934	56,622.68
Total		$106.968.44

Schedule E—Explanation of Deductions

Commissions and expenses of trustee	$1,209.47
Berkshire School	8,333.33

[fol. 213] EXHIBIT 32

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 8, 1929. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

Fiduciary Return of Income for Calendar Year 1928

Anna W. Dickinson Trust Under the Deed of John P. Wilson
United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 156.49	
Dividends on Stock of Domestic Corporations	116,846.20	
Total Income		$117,002.69

[fol. 214] Deductions

Interest Paid	$ 491.76	
Contributions (Explain in Schedule E)	8,333.33	
Other Deductions Authorized by Law (Explain in Schedule E)	1,209.47	
Total Deductions		10,034.56
Net Income		$106,968.13

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Percentage of Beneficiary Interest	Dividends	Capital Net Gain
Anna W. Dickinson	47066	$50,345.76	
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	52934	56,622.37	$49,139.61
Totals		$106,968.13	$49,139.61

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,209.47
Berkshire School	8,333.33

[fol. 215] EXHIBIT 33

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 8, 1929. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

Fiduciary Return of Income for Calendar Year 1928

Martha Wilson Trust under the deed of John P. Wilson
United States Trust Company of New York

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 156.94	
Dividends on Stock of Domestic Corporations	116,846.18	
Total Income		$117,003.12

[fol. 216] Deductions

Interest paid	$ 491,77	
Contributions (Explain in Schedule E)	8,333.34	
Other Deductions Authorized by Law (Explain in Schedule E)	1,209.46	
Total Deductions		10,034.57
Net Income		$106,968.55

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Percentage of Beneficiary Interest	Dividends	Capital Net Gain
John P. Wilson	23533	$25,172.88	
Anna W. Dickinson	23533	25,172.88	
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	52934	56,622.79	$49,139.64
Totals		$106,968.55	$49,139.64

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,209.46
Berkshire School	8,333.34

[fol. 217] EXHIBIT 34

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 3, 1930. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1930. Omitting the affidavit, the material portions of this document are as follows:

Individual Income Tax Return for Calendar Year 1929

Form 1040
Treasury Department
Internal Revenue Service

United States Trust Company of New York. Trust Under Deed of John P. Wilson (Martha Wilson Trust)

Income

Dividends on Stock of Domestic Corporations	$43,423.56	
Total Income		$43,423.56
Deductions		—0—
Net Income		$43,423.56

[fol. 218] Computation of Tax

Tax on Net Income	$2,176.56
Tax on Capital Gain or Loss (12½% of Schedule D)	6,307.56
Total Tax	$8,484.15

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind property	Date acquired	Date sold	Amount received	Cost	Net gain
Stock and Rights.	1925 & 6	1929	$92,703.02	$42,160.10	$50,542.92
Transfer Stamps				$82.16	
Notary fee				.25	82.41
					$50,460.51
				12½%	6,307.56

EXHIBIT 35

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 3, 1930. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1930. Omitting the affidavit, the material portions of this document are as follows:

[fol. 219] Form 1040
Treasury Department
Internal Revenue Service

Individual Income Tax Return for Calendar Year 1929

United States Trust Company of New York. Trust under the deed of John P. Wilson (John P. Wilson, Jr., Trust)

Income

Dividends on Stock of Domestic Corporations	$43,424.44	
Total Income		$43,424.44
Deductions		—0—
Net Income		$43,424.44

Computation of Tax

Tax on Net Income	$2,176.69
Tax on Capital Gain or Loss (12½% of Schedule D)	6,307.57
Total tax	$8,484.26

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain
Stock and Rights.	1925/6	1929	$92,703.04	$42,160.10	$50,542.94
Transfer Stamps				$82.14	
Notary fee				.25	82.39
					$50,460.55
				12½%	6,307.57

[fol. 220] EXHIBIT 36

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on March 3, 1930. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1930. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
Treasury Department
Internal Revenue Service

Individual Income Tax Return for Calendar Year 1929

United States Trust Company of New York, Trustee under the deed of John P. Wilson (Anna W. Dickinson Trust)

Income

Dividends on Stock of Domestic Corporations	$43,425.18	
Deductions		—0—
Net Income		$43,425.18
Total Income		$43,425.18

Computation of Tax

Tax on Net Income	$2,176.77
Tax on Capital Gain or Loss (12½% of Schedule D)	6,307.57
Total tax	$8,484.34

[fol. 221] Schedule D—Capital Net Gain or Loss from Sale of Assets Held More than Two Years

Kind of property	Date acquired	Date sold	Amount received	Cost	Net gain
Stock and Rights.	1925/6	1929	$92,703.04	$42,160.10	$50,542.94
Transfer Stamps				$82.12	
Notary fee				.25	82.37
					$50,460.57
				12½%	6,307.57

EXHIBIT 37

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on February 27, 1930. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1930. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
Treasury Department
Internal Revenue Service

Fiduciary Return of Income for Calendar Year 1929

Anna W. Dickinson Trust under the deed of John P. Wilson
United States Trust Company of New York

[fol. 222] Income

Interest on Bank Deposits, Notes and Corporation Bonds, etc.	$ 321.63	
Dividends on Stock of Domestic Corporations	127,672.43	
Total Income		$127,994.06

Deductions

Interest Paid	$ 83.05	
Contributions (Explain in Schedule E)	8,333.33	
Other Deductions Authorized by Law (Explain in Schedule E)	1,352.50	
Total Deductions		9,768.88
Net Income		$118,225.18

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
Anna W. Dickinson	$ 74,800.00
United States Trust Company of New York, held for accumulation and added to the principal of the trust under the terms and provisions of the deed	43,425.18
Totals	$118,225.18

[fol. 223] Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,352.50
Williams College	8,333.33

EXHIBIT 38

(Condensed)

This document was subscribed and sworn to by C. J. Worcester, Secretary of the United States Trust Company of New York, on February 27, 1930. It is stamped received, Collector of Internal Revenue, Second District of New York, March 15, 1930. Omitting the affidavit, the material portions of this document are as follows:

Fiduciary Return of Income for Calendar Year 1929

Form 1041
Treasury Department
Internal Revenue Service

Martha Wilson Trust Under Deed of John P. Wilson, United States Trust Company of New York

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 321.05	
Dividends on Stock of Domestic Corporations	127,672.42	
Total Income		$127,993.47
[fol. 224] Deductions		
Interest Paid	$ 83.07	
Contributions (Explain in Schedule E)	8,333.34	
Other Deductions Authorized by Law (Explain in Schedule E)	1,353.50	
Total Deductions		9,769.91
Net Income		$118,223.56

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
Anna W. Dickinson	$ 37,400.00
John P. Wilson	37,400.00
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	43,423.56
Total	$118,223.56

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,353.50
Williams College	8,333.34

[fol. 225] EXHIBIT 39

(Condensed)

The material portions of this document are as follows:

Form 1041
Treasury Department
Internal Revenue Service

Fiduciary Return of Income for Calendar Year 1929

John P. Wilson, Jr., Trust under the Deed of John P. Wilson, United States Trust Company of New York

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 321.07	
Dividends on Stock of Domestic Corporations	127,672.25	
Total Income		$127,993.32
[fol. 226] Deductions		
Interest Paid	$ 83.05	
Contributions (Explain in Schedule E)	8,333.33	
Other Deductions Authorized by Law (Explain in Schedule E)	1,352.50	
Total Deductions		9,768.88
Net Income		$118,224.44

Beneficiaries' Shares of Income and Credits

Name and Address of Each Beneficiary	Dividends
John P. Wilson, Jr.	$ 74,800.00
United States Trust Company of New York, Held for accumulation and added to the principal of the trust under the terms and provisions of the deed	43,424.44
Totals	$118,224.44

Schedule E—Explanation of Deductions

Commission and expenses of fiduciary	$1,352.50
Williams College	8,333.33

[fol. 227]

EXHIBIT 40

Trust A/D John P. Wilson

For John P. Wilson Jr. & Others

		Dep. Int. Paid	Principal	Income
1917				
	Ford		239,604.91	91,708.88
Mch. 12	Balance		116.54	2,493.76
			239,721.45	94,202.64
1917				
Mch. 29	Notary fees I. T.			.25
29	Income tax 1916		258.83	
	Income Notary fees		.25	
30	Jno. P. Wilson Agt			2,350.97
Apl. 30	Jno. P. Wilson Agt			8,371.29
May 31	Jno. P. Wilson Agt			19,628.00
June 30	Jno. P. Wilson Agt			4,243.75
July 13	Trans. from Inc. under authority			142.54
31	John P. Wilson Agt			8,320.96
Aug. 21	John P. Wilson Agt. RX			1,020.00
31	John P. Wilson Agt			19,632.00
Sept. 14	Transfer stamps 200 sh. Nat. Carbon		4.00	
29	John P. Wilson Agt			4,243.75
Oct. 31	John P. Wilson Agt			8,863.50
Nov. 30	John P. Wilson Agt			19,832.00
Dec. 10	Transfer & war tax st. 200 sh. Amer. Loco		8.00	
18	Transfer & war tax st. 300 sh. Amer. p.		12.00	
26	Transfer & war tax st. 500 sh. Goodyear T. & R.		20.00	
31	John P. Wilson Agt			4,543.75
1918				
Jan. 28	20 sh. Nat. Carbon p. @ 115		2,300.00	
28	321 sh. Un. Carbide & Carbon @ 50		16,050.00	

		Principal	Income
1917			
	Ford	239,721.45	94,202.64
		239,721.45	94,202.64
1917			
Mch. 12	Balance	116.54	2,493.76
Apl. 2	Div. Goodyear Tire & Rubber p.		5,250.00
14	Div. Gen. Elec. c.		1,640.00
21	Div. Amer. Loco. p.		1,338.75
May 1	Div. Nat. Carbon Co. c.		15,220.00
1	Div. Nat. Carbon Co. p.		4,408.00
June 1	Div. Inter. Harvester Corp. p.		1,029.00
1	Div. Inter. Harvester Co. of N. J. p.		589.75
1	Div. Studebaker Corp. p.		2,450.00
1	Div. Studebaker Corp. p.		175.00S
July 3	Div. Goodyear Tire & Rubber p.		5,250.00
July 13	Trans. to Prin	142.54	
14	Div. General Elec		1,640.00S
16	Div. Inter. Harvester N. J. Com.		187.50
21	Div. Amer. Loco. p.		1,386.00
Aug. 1	Div. Nat. Carbon c.		15,220.00
1	Div. Nat. Carbon p.		4,412.00
20	Div. General Elec. RX		1,020.00
Sept. 1	Div. Internat. Harvester Co. p.		589.75
1	Div. Internat. Harvester Corp.		1,029.00
1	Div. Studebaker Corp. p.		2,625.00

[fol. 228]

Jan.	28	40 sh. Gen. Elec. scrip @ 129		51.60		Oct.	1	Div. Goodyear Tire & Rubber p.		5,250.00
	31	John P. Wilson Agt.			24,208.50		15	Div. Gen. Elec. c.		2,040.00
Feb.	15	Subu. 142 sh. Genl. Elec. @ par		14,200.00			15	Div. Internat. Harvester c.		187.50
	28	Jno. P. Wilson Agt			8,695.75		22	Div. Amer. Loco. Co. p.		1,386.00
Mch.	12	Cons. on Income			1,620.96	Nov.	1	Div. Natl. Carbon Co. c.		15,420.00
	12	Balance		62,744.49			1	Div. Natl. Carbon Co. p.		4,412.00
						Dec.	1	Div. Internat. Harvester Corp. p.		1,029.00
							1	Div. Internat. Harvester Co. p.		589.75
							1	Div. Studebaker Corp. p.		2,625.00
							29	Div. Internatl. Harv. Co. N. J. c.		300.00S
						1918				
						Jan.	2	Union Carbide & Carbon		15,420.00
							2	300 shs. Amer. Loco. p. @ 95-c. & s.	18,967.00	
							3	300 shs. Amer. Loco. p. @ 95-c. & s.	28,450.50	
							5	Div. Goodyear Tire & Rubber p.		5,250.00
							9	25 shs. Goodyear T. & R. p. @ 96-c. & s.	2,395.87	
							15	Div. Internat'l Harv. N. J. c.		187.50
							15	Div. Gen. Elec. Co.		2,840.00
							15	25 shrs. Goodyear Tire & R. Co. p. 96-c. & s.	2,396.37	
							16	150 shrs. Goodyear Tire & R. Co. p. 96-c. & s.	14,378.25	
							17	175 shrs. Goodyear Tire & R. Co. p. 96-c. & s.	16,771.13	
							18	125 shrs. Goodyear Tire & R. Co. p. 96-c. & s.	11,979.37	
							22	Div. Amer. Loco. p.		511.00
							28	40 scrip Gen. Elec. @ 129	5,160.00	
						Feb.	1	Div. Nat. Carbon p.		4,452.00
						Mch.	1	Div. Nat'l Harvester Co. p.		589.75
							1	Div. Int'l Harvester Corp. p.		1,029.00
							1	Div. Studebaker Corp. p.		2,625.00S
							12	Int. to date T.		493.20
								Balance (%)		1,127.76
				95,649.17	135,717.97				95,649.17	135,717.97

160

145

[fol. 229]

Exhibit 40—Continued

1918		Dep. Int. Paid	Principal	Income
Mch. 12	Balance (O/D)			1,127.76
Apl. 17	Notary fees Inc. Tax			.25
30	Jno. P. Wilson Jr. Ag			22,941.49
May 23	100 sh. Internatl. Harvester Corp. &c. N. J. @ 129 &c		12,912.50	
23	200 sh. Internatl. Harvester Corp. &c. N. J. @ 129½ &c		25,825.00	
23	100 sh. Internatl. Harvester Corp. &c. N. J. @ 63½ &c		6,362.50	
23	200 sh. Internatl. Harvester Corp. &c. N. J. @ 65 &c		13,025.00	
			58,225.00	24,069.50

1918		Principal	Income
Mch. 12	Balance	62,744.49	
Apl. 2	Div. Carbide & Carbon Corp'n		15,741.00
2	Div. Goodyear Tire & Rubber p.		4,375.00
15	Div. Gen. Elec. c		3,180.00
15	Div. Internat. Harvester Co. c		262.50
22	Div. Amer. Loco. p		511.00
May 1	Div. Nat'l Carbon p		4,452.00
June 1	Div. Internat. Harvester Corp. p		1,029.00
1	Div. Internat. Harvester Co. p		589.75
1	Div. Studebaker Corp. p		2,625.00
		62,744.49	32,765.25

Exhibit 41

Trust A/D John P. Wilson
For John P. Wilson & Or.

1918		Dep. Int. Paid	Principal	Income
	Ford		58,225.00	24,069.50
May 31	Jno. P. Wilson Jr. Agt			4,452.00
June 3	40 sh. Nat. Carbon p		4,519.49	
29	Jno. P. Wilson Jr. Agt			4,243.75
July 31	Jno. P. Wilson Jr. Agt			24,594.50
Aug. 30	Jno. P. Wilson Jr. Agt			4,592.00
Sept. 27	Transfer to Jno. P. Wilson Jr. DD302		37.86	1,428.00
27	Transfer to Martha Wilson 308		37.87	1,428.00
27	Transfer to A. W. Dickinson 314		37.87	1,428.00
			62,858.09	66,235.75

1918		Principal	Income
	Ford	62,744.49	32,765.25S
July 1	Div. Goodyear Tire & Rubber p.		4,375.00S
2	Div. Union Carbide & Carbon		15,741.00
15	Div. Int'l Harvester N. J. c		562.50
15	Div. Gen. Electric		3,180.00
15	Div. Int'l Harvester Co. c. (bal.)		225.00
16	Sale scrip Div. 80/100 Shs. Gen. Elec. @ 142	113.60	
22	Div. Amer. Loco. p		511.00S
Aug. 1	Div. Natl. Carbon p		4,592.00S
Sept. 3	Div. Int'l Harvetser N. J. p		589.75S
3	Div. Int'l Harvester Corpn. p		1,069.25S
Aug. 31	Div. Studebaker Corp. p		2,625.00S
		62,858.09	66,235.75

[fol. 230]

EXHIBIT 42

Trust A/D John P. Wilson

Dated March 12, 1913

For John P. Wilson Jr.

Income—1918 Transfer all to Prin. thereafter ½ transfer to Prin., pay ½ to beneficiary during lifetime of John P. Wilson. Should beneficiary make request, all income may be paid upon approval of Jno. P. Wilson.
Com. Pr. 1% at termination
Inc. 2½ first $6,666.66
1% balance.

		Dep. Int. Paid	Principal	Income
1918				
Sept. 27	Transfer to Princ			1,428.00
Oct. 14	33⅓ shs. Gen. Elec. @ 144⅞ & c		4,829.16	
14	31⅔ shs. Gen. Gen. Elec. @ 145 &c		4,595.63	
16	11 shs. Gen. Elec. @ 145 &c		1,596.37	
22	1 sh. Gen. Elec. @ 145 &c		145.13	
26	3 shs. Gen. Elec. @ 145 &c		435.38	
31	Transfer to Princ			10,184.74
31	2 shs. Gen. Elec. @ 145 &c		290.25	
Nov. 20	10 shs. Gen. Elec. @ 145 &c		1,451.25	
30	Transfer to Princ			1,830.67

[fol. 231]

Dec. 3	10 shs. Gen. Elec. @ 145 &c		1,451.25	
31	Transfer to Princ			1,428.00
1919				
Jan. 15	1,049 shs. Un. Carbide & Carbon @ 40		41,960.00	
31	Income to 1/15/19 transf. to Princ			10,447.74
31	Income to 1/15/19 transf. to Princ			85.16
31	John P. Wilson Jr. Agt			85.17

		V90	Principal	Income
1918				
Sept. 27	Transfer from Undiv. Trust		37.86	1,428.00
27	Transfer from Income		1,428.00	
Oct. 1	Div. Union Carbide & Carbon			6,558.75
2	Div. Goodyear Tire & Rubber p			1,458.33
15	Div. Gen. Elec. c			1,080.66
15	Div. Gen. Elec. c			466.67
21	Div. Amer. Locomotive p			170.33
25	Div. Internat. & Harvester c			450.00S
31	Div. Intl. Harvester Co. due 10/25			300.00
31	Transfer from Income		10,184.74	
Nov. 1	Div. Nat'l Carbon p			1,530.67S
30	Transfer from Income		1,830.67	
Dec. 2	Div. Int'l Harvesting			553.00
2	Div. Studebaker p			875.00
31	Transfer from Income		1,428.00	S
1919				

147

EXHIBIT 42—Continued

	Dep. Int. Paid	Principal	Income			Principal	Income
Feb. 13	5 Shs. Gen. Elec. @ 145 &c	725.62		Jan. 2	Div. Un. Carbide & Carbon		6,558.75
28	Income J. P. W. Jr. Ag. ½		765.33	3	Div. Goodyear Tire & Rubber p		1,458.33
28	Income transfer to Princ. ½		765.33	13	Advance p. J. P. Wilson	31,378.33	
Mch. 12	Coms. on Income		591.82	14	Sale rts 2 sh. Un. Carbide & Carbon 3⅛ c	6.17	
12	Balance	133.10	920.36	15	Div. Gen. Elec		1,680.66
				15	Div. Int'l Harvester Co. c		750.00S
				16	14/100 sh. Gen. Elec. @ 151	21.14	
				21	Div. Amer. Loco. p		170.33
				31	Transfer from Income	10,447.74	
				31	Transfer from Income	85.16	S
				Feb. 1	Div. Nat. Carbon p		1,530.66
				28	Transfer from Income	765.33	S
				Mch. 1	Div. Int'l Harvester p		553.00S
				1	Div. Studebaker p		875.00
				12	Int. to date T		84.18
		57,613.14	28,532.32			57,613.14	28,532.32

[fol. 232]

	Dep. Int. Paid	Principal	Income			Principal	Income
1919				1919			
Mch. 15	Income tax 1918		342.28	Mch. 12	Balance	133.10	920.36
15	Notary fees I. T		.25	3	Transfer from Income	288.91	S
31	Income		288.92	Apl. 1	Div. Un. Carbide & Carbon		7,870.00
31	Income transfer to Princ		288.91	2	Div. Goodyear Tire & Rubber p		1,458.33
Apr. 4	26 shs. Gen. Elec. 145 &c	3,773.25		15	Div. Internat'l Harvester c		750.00
4	6 shs. Gen. Elec. 146 &c	876.75		15	Div. General Elec		1,714.00
22	11 shs. Gen. Elec. 146 &c	1,607.38		21	Div. Amer. Loco. p		170.33
30	Income		5,981.33	30	Transfer from Income	5,981.33	S
30	Income transfer to Princ		5,981.33	May 1	Div. Nat. Carbon Co. p		1,530.67

May	5	6 shs. Gen. Elec. 140 &c	876.75			31	Transfer fr. Income	765.33	S
	31	Income		765.34	June	2	Div. Int. Harvester p		553.00
	31	Income Trans. to Prin.		765.33		2	Div. Studebaker p		875.00
June	30	J. P. Wilson Jr. Agt.		714.00	June	30	Trans. fr. Income	714.00	S
	30	Trans. to Prin.		714.00	July	1	Div. Union Carb. & Carb		7,870.00
July	31	Trans. to Prin.		5,991.33	July	1	Div. Union Carbide & Carbon		20.00
	31	J. P. Wilson Jr. Agt.		5,991.33		2	Div. Goodyear Tire & Rubber p		1,458.33
Aug.	4	48 shs. Gen. Elec. @ 140 &c	6,721.75			15	Div. Int'l Harvester c		750.00
	30	Trans. to Prin.		765.33		16	Div. Gen'l Elec		1,714.00
	30	J. P. Wilson Jr. Agt.		765.33		17	14/100 shs. Gen'l Elec. @ 166	23.24	
Sept.	30	J. P. Wilson Jr. Agt.		714.00		22	Div. Amer. Loco. p		170.33
	30	Transfer to Prin.		714.00		31	Transfer from Income	5,991.33	S
Oct.	6	10 shs. Gen. Elec. 140 &c	1,401.25		Aug.	1	Div. Nat. Carbon p		1,530.66
					Sept.	2	Div. Int'l Harvester p		553.00S
						2	Div. Studebaker p		875.00
					Aug.	30	Transfer from Income	765.33	
					Sept.	30	Transfer from Income	714.00	S
					Oct.	1	Div. Union Carbide & Carbon		7,890.00
					Sept.	20	Div. Amer. Loco. p		170.33
					Oct.	2	Div. Goodyear Rub. & Tire p		1,458.33
						15	Div. Int'l Harvester c		750.00
						15	Div. Genl. Elec		1,748.00
		Ford	18,317.13	30,783.01			Ford	15,376.57	42,799.67

[fol. 233]

Exhibit 43

Trust A/D John P. Wilson
Dated March 12, 1913
For Martha Wilson

Income Payments see folio 302.
Com. Pr.—1% at termination
Inc. 2½ first $6,666.66
1% balance

			Dep. Int. Paid	Principal	Income
1918					
Sept.	27	Transfer to Princ.			1,428.00
Oct.	14	33⅓ shs. Gen. Elec. @ 144⅞ &c.		4,829.16	
	14	31⅔ shs. Gen. Elec. @ 145 &c.		4,595.63	
	16	11 shs. Gen. Elec. @ 145 &c.		1,596.37	
	22	1 sh. Gen. Elec. @ 145 &c.		145.13	
	26	3 shs. Gen. Elec. @ 145 &c.		435.38	
	31	Transfer to Princ.			10,184.75
	31	2 shs. Gen. Elec. @ 145 &c.		290.25	
Nov.	20	10 shs. Gen. Elec. @ 145 &c.		1,451.25	
	30	Transfer to Princ.			1,830.66
Dec.	3	10 shs. Gen. Elec. @ 145 &c.		1,451.25	
	31	Transfer to Princ.			1,428.00
1919					
Jan.	15	1049 shs. Un. Carbide & Carbon @ 40		41,960.00	
	31	Income to 1/15/19 transfer to Princ.			10,447.75
	31	Income to 1/15/19 transfer to Princ.			85.16
	31	John P. Wilson Jr. Agt.			85.17
Feb.	13	5 shs. Gen. Elec. @ 145		725.63	
	28	Income J. P. W. Jr. Ag. ½			765.33
	28	Income transfer to Princ.			765.34
Mch.	12	Coms. on Income			591.82
	12	Balance		133.13	920.36
				57,613.18	28,532.34

			V90	Principal	Income
1918					
Sept.	27	Transfer from Union Trust		37.87	1,428.00
	27	Transfer from Income		1,428.00	
Oct.	1	Div. Union Carbide & Carbon			6,558.75
	2	Div. Goodyear Tire & Rubber p.			1,458.33
	15	Div. Gen. Elec. c.			1,080.67
	15	Div. Gen. Elec. c.			466.67
	21	Div. Amer. Locomotive p.			170.33
	25	Div. Internat. Harvester c.			450.00S
	31	Div. Internat. Harvester Co. due 10/25			300.00
	31	Transfer from Income		10,184.75	
Nov.	1	Div. Nat'l Carbon p.			1,530.66S
	30	Transfer from Income		1,830.66	
Dec.	2	Div. Studebaker p.			875.00
	2	Div. Int. Harvester p.			553.00
	31	Transfer from Income		1,428.00	S
1919					
Jan.	2	Div. Un. Carbide & Carbon			6,558.75
	3	Div. Goodyear Tire & Rubber, p.			1,458.33
	13	Advance from J. P. Wilson		31,378.34	
	14	Sale rts 2 sh. Un. Carbide & Carbon 3⅛ c.		617.00	
	15	Div. Gen. Elec.			1,680.67
	15	Div. Int'l Harvester Co. c.			750.00
	16	13/100 shs. Gen. Elec. @ 151		21.14	
	21	Div. Amer. Loco. p.			170.33
	31	Transfer from Income		10,447.75	
	31	Transfer from Income		85.16	S
Feb.	1	Div. Nat. Carbon p.			1,530.67
	28	Transfer from Income		765.34	S
Mch.	1	Div. Studebaker p.			875.00S
	1	Div. Int'l Harvester p.			553.00
	12	Int. to date T.			84.18
				57,613.18	28,532.34

[fol. 234]

1919			
Mch. 15	Income tax 1918		342.28
15	Notary fees I. T.		.25
31	Income J. P. W. Jr. Agt.		288.92
31	Income transfer to Princ.		288.91
Apl. 4	27 shs. Gen. Elec. 145 &c.	3,918.37	
4	5 shs. Gen. Elec. 146 &c.	730.63	
22	11 shs. Gen. Elec. 146 &c.	1,607.38	
30	Income J. P. W. Jr. Agt.		5,981.33
30	Income transfer to Princ.		5,981.33
May 5	6 shs. Genl. Elec. 146 &c.	876.75	
31	Income		765.33
31	Income Trans. to Princ.		765.33
June 30	J. P. Wilson Jr. Agt.		714.00
30	Trans. to Princ.		714.00
July 31	Trans. to Princ.		5,991.33
31	J. P. Wilson Jr. Agt.		5,991.33
Aug. 4	46 shs. Gen. Elec. @ 146 &c.	6,721.75	
30	Transfer to Princ.		765.34
30	J. P. Wilson Jr. Agt.		765.33
Sept. 30	J. P. Wilson Jr. Agt.		714.00
30	Transfer to Princ.		714.00
Oct. 6	10 shs. Geh. Elec. 146 &c.	1,461.25	
31	Transfer to Princ.		6,008.33
31	Income J. P. W. Jr. Agt.		6,008.33
	Ford.	15,316.13	42,799.67

1919			
Mch. 12	Balance	133.13	920.36
31	Transfer from Income	288.91	S
Apl. 1	Div. Un. Carbide & Carbon		7,870.00
2	Div. Goodyear Tire & Rubber p.		1,458.33
15	Div. Internat'l Harvester c.		750.00
15	Div. General Elec.		1,714.00
21	Div. Amer. Loco. p.		170.33
30	Transfer from Income	5,981.33	S
May 1	Div. Nat. Carbon p.		1,530.66
31	Income Trans. to Princ.	765.33	S
June 2	Div. Int'l Harvester p.		553.00
2	Div. Studebaker p.		875.00
June 30	Trans. fr. Income	714.00	S
July 1	Div. Un. Carbide & Carb.		7,870.00
1	Div. Union Carbide & Carbon		20.00
2	Div. Goodyear Tire & Rubber p.		1,458.33
15	Div. Int'l Harvester c.		750.00
16	Div. Gen'l Elec.		1,714.00
17	14/100 shs. Gen'l Elec.	23.24	
22	Div. Amer. Loco. p.		170.33
31	Transfer from Income	5,991.33	S
Aug. 1	Div. Nat. Carbon p.		1,530.67
30	Transfer from Income	765.34	S
Sept. 2	Transfer Int'l Harvester p.		553.00
2	Transfer Studebaker p.		875.00
30	Transfer from Income	714.00	S
Oct. 1	Div. Union Carbide & Carbon		7,890.00
Sept. 30	Div. Amer. Loco. p.		170.33
Oct. 2	Div. Goodyear Rub. & Tire p.		1,458.33
15	Div. Int'l Harvester c.		750.00
15	Div. Genl. Elec.		1,748.00
31	Transfer from Income	6,008.33	S
	Ford.	21,384.94	42,799.67

[fol. 235]

Income payments see folio 302
Com. Pr.—1% at termination
Inc. 2½ first $6,666.66
1% balance

Exhibit 44

Trust A/D John P. Wilson
Dated March 12, 1913
For Anna M. Dickinson

		Dep. Int. Paid	Principal	Income
1918				
Sept. 27	Transfer to Princ			1,428.00
Oct. 14	33⅓ shs. Gen. Elec. @ 144⅞ &c		4,829.16	
14	31⅔ shs. Gen. Elec. @ 145 &c		4,595.63	
16	11 shs. Gen. Elec. @ 145 &c		1,596.37	
22	1 sh. Gen. Elec. @ 145 &c		145.13	
26	3 shs. Gen. Elec. @ 145 &c		435.38	
31	Transfer to Princ			10,184.76
31	2 shs. Gen. Elec. @ 145 &c		290.25	
Nov. 20	10 shs. Gen. Elec. @ 145 &c		1,451.25	
30	Transfer to Princ			1,830.67
Dec. 3	10 shs. Gen. Elec. @ 145 &c		1,451.25	
31	Transfer to Princ			1,428.00
1919				
Jan. 15	1049 shs. Un. Carbide & Carbon @ .40		41,960.00	
31	Income to 1/15/19 transfer to Princ			10,447.76
31	Income to 1/15/19 transfer to Princ			85.17
31	John P. Wilson Jr. Agt			85.17
Feb. 13	5 shs. Gen. Elec. @ 145 &c		725.62	
28	Income J. P. W. Jr. Ag. ½			765.33
28	Income transfer to Princ			765.34
Mch. 12	Coms. on Income			591.82
12	Balance		133.17	920.36
			57,613.21	28,532.38

		V90 Principal	Income
1918			
Sept. 27	Transfer from Undiv. Trust	37.87	1,428.00
27	Transfer from Income	1,428.00	
Oct. 1	Div. Union Carbide & Carbon		6,558.75
2	Div. Goodyear Tire & Rubber p		1,458.34
15	Div. Gen. Elec. c		1,080.67
15	Div. Gen. Elec. c		466.66
21	Div. Amer. Locomotive p		170.34
25	Div. Internat. Harvester c		450.00S
31	Div. Internat. Harvester due 10/25		300.00
31	Transfer from Income	10,184.76	
Nov. 1	Div. Nat. Carbon p		1,530.67S
30	Transfer from Income	1,880.67	
Dec. 2	Div. Int. Harvester p		553.00
2	Div. Studebaker p		875.00
31	Transfer from Income	1,428.00	S
1919			
Jan. 2	Div. Un. Carbide & Carbon		6,558.75
2	Div. Goodyear Tire & Rubber p		1,458.34
13	Advances from J. P. Wilson	31,378.33	
14	Sale rts 2 sh. Un. Carbide & Carbon	6.17	
15	Div. Gen. Elec		1,680.67
15	Div. Int'l Harvester Co. c		750.00
16	14/100 shs. Gen. Elec. @ 151	21.14	
21	Div. Amer. Loco. p		170.34
31	Transfer from Income	10,447.76	
31	Transfer from Income	85.17	S
Feb. 1	Div. Nat. Carbon p		1,530.67
28	Transfer from Income	765.34	S
Mch. 1	Div. Int'l Harvester p		553.00
1	Div. Studebaker p		875.00
12	Int. to date T		84.18
		57,613.21	28,532.38

[fol. 236]

1919			
Mch. 15	Income tax 1918		342.29
15	Notary fees I. T.		.25
31	Income J. P. W. Jr. Agt.		288.91
31	Income transfer to Princ.		288.91
Apl. 4	26 shs. Gen. Elec. 145 &c.	3,773.25	
4	6 shs. Gen. Elec. 146 &c.	876.75	
22	11 shs. Gen. Elec. 146 &c.	1,603.37	
30	Income J. P. W. Agt.		5,981.34
30	Income transfer to Princ.		5,981.34
May 5	6 shs. Gen. Elec. 146 &c.	876.75	
31	Income		765.34
31	Income transf. to Prin.		765.33
June 30	J. P. Wilson Jr. Agt.		714.00
30	Trans. to Prin.		714.00
July 31	Trans. to Prin.		5,991.34
31	J. P. Wilson Jr. Agt.		5,991.34
Aug. 4	46 shs. Gen. Elec. @ 146 &c.	6,521.75	
30	Income transf. to Princ.		765.34
30	J. P. Wilson Jr. Agt.		765.33
Sept. 30	J. P. Wilson Jr. Agt.		714.00
30	Transfer to Princ.		714.00
Oct. 6	10 shs. Gen. Elec. 146 &c.	1,461.25	
31	Transfer to Princ.		6,008.34
31	Income J. P. W. Jr. Agt.		6,008.34
	Ford	15,317.12	42,799.74

1919			
Mch. 12	Balance	133.17	920.36
31	Transfer from Income	288.91	S
Apl. 1	Div. Un. Carbide & Carbon.		78.70
2	Div. Goodyear Tire & Rubber p.		1,458.34
15	Div. Internat'l Harvester c.		750.00
15	Div. General Elec.		1,714.00
21	Div. Amer. Loco. p.		170.34
30	Transfer from Income	5,981.34	S
May 1	Div. Nat. Carbon p.		1,530.67
31	Transf. fr. Income	765.33	S
June 2	Div. Int. Harvester p.		553.00
2	Div. Studebaker p.		875.00
June 30	Trans. fr. Income	714.00	S
July 1	Div. Un. Carbide & Carb.		7,870.00
1	Div. Union Carbide & Carbon		20.00
2	Div. Goodyear Tire & R. p.		1,458.34
15	Div. Nat. Biscuit p.		750.00
16	Div. Gen'l Elec.		1,714.00
17	14/100 shs. Gen'l Elec. @ 166 sh.	23.24	
22	Div. Amer. Loco. p.		170.34
31	Transfer from Income	5,991.34	S
Aug. 1	Div. Nat. Carbon p.		1,530.67
30	Transfer from Income	765.34	S
Sept. 2	Div. Int'l Harvester p.		553.00
2	Div. Studebaker p.		875.00
30	Transfer from Income	714.00	S
Oct. 1	Div. Union Carbide & Carbon		7,890.00
Sept. 30	Div. Amer. Loco. p.		170.34
Oct. 2	Div. Goodyear Tire & Rub. p.		1,458.34
15	Div. Int'l Harvester c.		750.00
15	Div. Gen'l Elec.		1,748.00
31	Transfer from Income	6,008.34	S
	Ford	21,385.01	42,799.74

[fol. 237]

EXHIBIT 45

Trust A/D John P. Wilson

For John P. Wilson Jr.

		Dep. Int. Paid	Principal	Income
1923				
	Ford		17,905.44	32,280.24
Oct. 1	Income			2,000.00
19	Transfer to Prin.			7,253.33
19	66⅔ shs. Gen'l Elec. com. @ 108[80]		7,253.33	
20	Transfer stamps 66⅔ shs. Gen. Elec.		2.67	
31	Transfer to Princ.			2.67
Nov. 1	Income			2,000.00
8	9 shs. Gen. Elec. @ 108[80]		979.20	
8	Transfer to Princ.			979.20
13	Transfer stamps 9 shs. Gen. Elec.		.36	
29	Transfer to Princ.			.36
Dec. 1	Income			2,000.00
14	Bal. U. S. Inc. tax 1922			794.96
31	Transfer to Princ.			245.31
1924				
Jan. 2	Income			2,000.00
17	47⅓ shs. Gen. Elec. @ 109[80]		5,181.11	
21	Transfer stamps 47⅓ shs. Gen. Elec.		1.89	
21	Transfer to Princ.			4,937.69
Feb. 1	Income			2,000.00
Mch. 1	Income			2,000.00
12	Coms. to trustee			666.00
	Balance			2,745.67
			31,324.00	61,905.43

Also DD313 2½%

		Principal	Income
1923			
	Ford	17,905.44	33,210.31
Sept. 29	Div. Amer. Loco. p.		170.33S
Oct. 1	Div. Union Carbide & Carbon		6,943.00
15	Div. Int'l Harvester c.		891.66
15	Div. Gen'l Elec. com.		3,116.67
15	Div. Gen'l Elec. spc'l		95.10
19	Transfer from Income	7,253.33	
31	Transfer from Income	2.67	S
Nov. 1	Div. Nat'l Carbon Co. p.		1,530.67
8	Transfer from Income	979.20	S
Dec. 1	Div. Int'l Harvester p.		553.00
1	Div. Studebaker p.		875.00
Nov. 29	Transfer from Income	.36	
Dec. 31	Div. Amer. Loco. p.		170.33
31	Transfer from Income	245.31	S
1924			
Jan. 2	Div. Union Carb. & Carbon		6,943.00
15	Div. Int'l Harvester com.		891.66
15	Div. Gen. Elec. c.		3,268.60
15	Div. Gen. Elec. Spec'l		211.95
21	Transfer from Income	4,937.69	S
Feb. 1.	Div. National Carbon Co. pfd.		1,530.67S
Mch. 1	Div. Int'l Harvester p.		553.00
1	Div. Studebaker p.		875.00
12	Int. to date T.		76.08
		31,324.00	61,905.43

[fol. 238]

1924					Mch.	12	Balance	2,745.67
Mar.	15	1st ¼ U. S. Inc. Tax 1923		401.71		31	Div. Amer. Loco. p	170.33S
	15	Notary fee Inc. Tax 1923		.25	Apr.	1	Div. Union Carbide & Carbon	8,678.75
	18	Notary fee Inc. Tax 1923		.25		15	Div. Gen. Elec. c	3,362.67
Apl.	1	Income		2,000.00		15	Div. Gen. Elec. spec	212.00
	15	34⅜ shs. Gen. Elec. @ 109[40]	3,793.23			15	Div. Inter'l Harvester c	891.66
	15	302½ shs. Gen. Elec. Spec'l 11[11]	3,357.71			23	Transfer fr. Income	11,446.37 S
	15	16⅜ shs. U. S. Steel c. 83[37]	1,387.17		May	1	Div. Nat'l Carbon p	1,530.67S
	15	33⅛ shs. U. S. Steel c. 87[12]	2,903.66		June	2	Div. Int'l Harvester p	553.00
	16	Transfer stamps various	4.60			2	Div. Studebaker p	875.00
	23	Transfer to Prin		11,446.37		28	Div. U. S. Steel com	87.50S
May	1	Income		2,000.00		30	Div. Amer. Loco. p	170.33
June	2	Income		2,000.00	July	1	Div. Un. Carbide & Carbon	8,678.75
	13	2nd ¼ U. S. Inc. tax 1923		200.86		15	Div. Gen. Elec. c	3,432.00
July	1	Income		2,000.00		15	Div. Gen. Elec. spec	257.35
	17	16⅜ shs. U. S. Steel c. 83[12] & stps	1,384.83			15	Div. Int'l Harvester c	891.67
	17	100 shs. U. S. Steel c. 87[12] & stps	8,711.00			17	Transfer from Income	10,100.50 S
	17	Transfer stamps 116⅜ shs. U. S. Steel c	4.67		Aug.	1	Div. Nat'l Carbon Co. p	1,530.66S
	17	Transfer to Princ		10,100.50	Sept.	2	Div. Int'l Harvester p	553.00
Aug.	1	Income		2,000.00		2	Div. Studebaker p	875.00S
Sept.	2	Income		2,000.00		29	Div. U. S. Steel com	291.66
	12	3rd ¼ U. S. Inc. Tax 1923		301.29	Oct.	1	Div. Union Carbide Carbon	8,678.75
Oct.	1	Income		2,000.00		1	Div. Amer. Loco. p	170.33
Nov.	1	Income		2,000.00		15	Div. Gen'l Elec. spec'l	257.35
						15	Div. Int'l Harvester com	891.66
						15	Div. Gen'l Elec. c	3,432.00S
					Nov.	1	Div. Nat'l Carbon p	1,530.67
		Ford to RRI	21,546.87	38,451.23			Ford. to RRI	21,546.87 50,748.43

[fol. 239]

EXHIBIT 46

For Payments see 302

Trust A/D John P. Wilson

For Anna W. Dickinson

Also DD313 2½%

		Dep. Int. Paid	Principal	Income
1923				
	Ford		17,905.44	34,280.26
Oct. 19	Transfer to Princ.			7,253.34
19	66⅔ shs. Genl. Elec. @ 108⁸⁰		7,253.34	
20	Transfer stamps 66⅔ shs. Gen. Elec.		2.66	
31	Transfer to Princ.			2.66
Nov. 1	Income			2,000.00
8	9 shs. Gen. Elec. @ 108⁸⁰		979.20	
8	Transfer to Princ.			979.20
13	Transfer stamps 9 shs. Gen. Elec.		.36	
29	Transfer to Princ.			.36
Dec. 1	Income			2,000.00
14	Bal. U. S. Inc. tax 1922			794.96
31	Transfer to Princ.			245.39
1924				
Jan. 2	Income			2,000.00
17	47⅓ shs. Gen. Elec. @ 109⁴⁶		5,181.11	
21	Transfer stamps 47⅓ shs. Gen'l Elec.		1.89	
21	Transfer to Princ.			4,937.61
Feb. 1	Income			2,000.00
Mch. 1	Income			2,000.00
12	Coms. to trustee			666.00
	Balance			2,745.75
			31,323.00	61,905.53

		Principal	Income
1923			
	Ford	17,905.44	40,323.75
Oct. 15	Div. Int'l Harvester c.		891.67
15	Div. Gen'l Elec. c.		3,116.64
15	Div. Gen'l Elec. Spec'l.		95.10
19	Transfer from Income	7,253.34	
31	Transfer from Income	2.66	S
Nov. 1	Div. Nat'l Carbon p.		1,530.67
8	Transfer from Income	979.20	S
Dec. 1	Div. Int. Harvester p.		553.00
1	Div. Studebaker p.		875.00
Nov. 29	Transfer from Income	.36	
Dec. 31	Div. Amer. Loco. p.		170.34
31	Transfer from Income	245.39	S
1924			
Jan. 2	Div. Union Carb. & Carbon		6,943.00
15	Div. Int'l Harvester Com.		891.66
15	Div. Gen. Elec. c.		3,268.00
15	Div. Gen. Elec. spec'l.		211.95
21	Transfer from Income	4,937.61	S
Feb. 1	Div. Nat'l Carbon Co. pfd.		1,530.67S
Mch. 1	Div. Int'l Harvester p.		553.00
1	Div. Studebaker p.		875.00
12	Int. to date T.		76.08
		31,323.00	61,905.53

[fol. 240]

1924

Mar.	15	1st ¼ U. S. Inc. tax 1923			401.71	Mch.	12	Balance	2,745.75
	15	Notary fees U. S. Inc. tax 1923			.25		31	Div. Amer. Loco. p	170.34S
	18	Notary fees U. S. Inc. tax.1923			.25	Apl.	1	Div. Un. Carbide & Carbon	8,678.75
Apl.	1	Income			2,000.00		15	Div. Gen. Elec. c	3,362.64
	15	34⅜ shs. Gen. Elec. c. 109[46]	3,793.22				15	Div. Gen. Elec. Spec	212.00
	15	302⅛ shs. Gen. Elec. Spec'l 11[11]	3,357.71				15	Div. Intern'l Harvester c	891.67
	15	16⅜ shs. U. S. Steel c. 83[27]	1,387.16				23	Transfer fr. Income	11,446.36 S
	15	33⅛ shs. U. S. Steel c. 87[15]	2,903.67			May	1	Div. Nat'l Carbon p	1,530.66S
	16	Transfer stamps various	4.60			June	2	Div. Int'l Harvester p	553.00
	23	Transfer to Prin			11,446.36		2	Div. Studebaker p	875.00
May	1	Income			2,000.00		28	Div. U. S. Steel com.	87.50S
June	2	Income			2,000.00		30	Div. Amer. Loco. p	170.34
	13	2nd ¼ U. S. Inc. Tax 1923			200.86	July	1	Div. Un. Carbide & Carbon	8,678.75
July	1	Income			2,000.00		15	Div. Gen. Elec. c	3,432.00
	17	16⅜ shs. U. S. Steel c. 83[13] & stps	1,384.84				15	Div. Gen. Elec. spec	257.35
	17	100 shs. U. S. Steel c. 87[15] & stps	8,711.00				15	Div. Intern'l Harvester c	891.67
	17	Transf. stamps 116⅜ shs. U. S. Steel c.	4.67				17	Transfer from Income	10,100.51 S
	17	Transfer to Princ			10,100.51	Aug.	1	Div. Nat'l Carbon Co. p	1,530.67S
Aug.	1	Income			2,000.00	Sept.	2	Div. Int. Harvester p	553.00
Sept.	2	Income			2,000.00		2	Div. Studebaker p	875.00S
	12	3rd ¼ U. S. Inc. Tax 1923			301.29		29	Div. U. S. Steel com	291.67
Oct.	1	Income			2,000.00	Oct.	1	Div. Un. Carbide & Carbon	8,678.75
Nov.	1	Income			2,000.00		1	Div. Amer. Loco. p	170.34
							15	Div. Gen'l Elec. spec'l	257.35
							15	Div. Int'l Harvester com	891.67
							15	Div. Gen'l Elec. com	3,432.00S
						Nov.	1	Div. Nat'l Carbon p	1,530.66
		Ford. to RR 6	21,546.87		38,451.23			Ford. to RR 6	21,546.87 50,748.53

[fol. 241]

For Income payment See Folio 302

EXHIBIT 47

Trust A/D John P. Wilson

For Martha Wilson

Died Dec. 25, 1923

		Dep. Int. Paid	Principal	Income
1923				
	Ford		17,905.42	34,280.22
Oct. 19	Transfer to Prin			7,253.33
19	66⅔ shs. Gen. Elec. com @ 108⅝		7,253.33	
20	Transfer stamps 66⅔ shs. Gen. Elec.		2.67	
31	Transfer to Princ			2.67
Nov. 1	Income			2,000.00
8	9 shs. Gen. Elec. @ 108⅝		979.20	
8	Transfer to Princ			979.20
13	Transfer stamps 9 shs. Gen. Elec.		.36	
29	Transfer to Princ			.36
Dec. 1	Income			2,000.00
14	Bal. U. S. Inc. tax 1922			794.96
31	Transfer to Princ			245.57
1924				
Jan. 2	John P. Wilson Jr.			1,000.00
2	Anna M. Dickinson			1,000.00
17	47⅓ shs. Gen. Elec. @ 109⅝		5,181.10	
21	Transfer stamps 47⅓ shs. Gen. Elec.		1.90	
21	Transfer to Princ			4,937.43
Feb. 1	John P. Wilson Jr.			1,000.00
1	Anna M. Dickinson			1,000.00
Mch. 1	Anna M. Dickinson			1,000.00
1	John P. Wilson Jr.			1,000.00
12	Coms. to trustee			666.00
15	1st ¼ U. S. Inc. tax 1923			401.72
15	Notary fees U. S. Inc. tax 1923			.25
18	Notary fees U. S. Inc. tax 1923			.25

Also DD306 DD318 2½%

		Principal	Income
1923			
	Ford	17,905.42	40,323.86
Oct. 15	Div. Int'l Harvester c		891.67
15	Div. Gen'l Elec. c		3,116.69
15	Div. Gen'l Elec. spec'l		95.10
19	Transfer from Income	7,253.33	
31	Transfer from Income	2.67	S
Nov. 1	Div. Nat'l Carbon Co. p		1,530.66
8	Transfer from Income	979.20	S
Dec. 1	Div. Studebaker p		875.00
1	Int'l Harvester p		553.00
Nov. 29	Transfer from Income	.36	
Dec. 31	Div. Amer. Loco. p		170.33
31	Transfer from Income	245.57	S
1924			
Jan. 2	Div. Union Carb. & Carbon		6,943.00
15	Div. Int'l Harvester		891.68
15	Div. Gen. Elec.		3,268.00
15	Div. Gen. Elec. Spec'l		211.95
21	Transfer from Income	4,937.43	
Feb. 1	Div. Nat. Carbon p		1,530.66S
Mch. 1	Div. Int'l Harvester p		553.00
1	Studebaker p		875.00
12	Int. to date T		76.08
31	Div. Amer. Loco. p		170.33S
Apl. 1	Div. Union Carbide & Carbon		8,678.75
15	Div. Gen. Elec. c		3,362.69
15	Div. Gen. Elec. spec		212.00

[fol. 242]

Apl. 1	Anna W. Dickinson		1,000.00	
1	John P. Wilson Jr.		1,000.00	
15	34⅜ shs. Gen. Elec. c. 109[46]	3,793.23		
15	302⅛ shs. Gen. Elec. Spec'l 11[11]	3,357.71		
15	16⅜ shs. U. S. Steel c. 83[27]	1,387.17		
15	33⅛ shs. U. S. Steel c. 87[15]	2,903.67		
16	Transfer stamps various	4.60		
23	Transfer to Prin.		11,446.38	
May 1	Anna W. Dickinson		1,000.00	
1	John P. Wilson Jr.		1,000.00	
June 2	John P. Wilson Jr.		1,000.00	
2	A. W. Dickinson		1,000.00	
13	2nd ¼ U. S. Inc. Tax 1923		200.86	
July 1	A. W. Dickinson		1,000.00	
1	John P. Wilson Jr.		1,000.00	
17	16⅜ shs. U. S. Steel c. 83[13] & st	1,384.83		
17	100 shs. U. S. Steel c. 87[15] & st	8,711.00		
17	Transfer stamps 116⅜ shs. U. S. Steel c	4.66		
17	Transfer to Princ.		10,100.49	
Aug. 1	Anna W. Dickinson		1,000.00	
1	John P. Wilson Jr.		1,000.00	
Sept. 2	John P. Wilson Jr.		1,000.00	
2	Anna W. Dickinson		1,000.00	
12	3rd ¼ U. S. Inc. Tax 1923		301.29	
Oct. 1	A. W. Dickinson		1,000.00	
1	J. P. Wilson Jr.		1,000.00	
Nov. 1	J. P. Wilson Jr.		1,000.00	
1	Anna W. Dickinson		1,000.00	
	Ford. to RR 11	52,870.85	97,610.98	

Apl. 15	Div. Intern'l Harvester c.			891.67
23	Transfer from Income		11,446.38	S
May 1	Div. Natl. Carbon p.			1,530.67S
June 2	Div. Int'l Harvester p.			553.00
2	Div. Studebaker p.			875.00
28	Div. U. S. Steel com.			87.50S
July 1	Div. Union Carb. & Carbon			8,678.75
June 30	Div. Amer. Loco. p.			170.33
July 15	Div. Gen. Elec. c.			3,432.00
15	Div. Gen. Elec. spec.			257.35
15	Div. Intern'l Harvester c.			891.66
17	Transfer from Income		10,100.49	S
Aug. 1	Div. Nat'l Carbon Co. p.			1,530.67S
Sept. 2	Div. Int'l Harvester p.			553.00
2	Div. Studebaker p.			875.00S
29	Div. U. S. Steel com.			291.67
Oct. 1	Div. Union Carbide & Carb.			8,678.75
1	Div. Amer. Loco. p.			170.33
15	Div. Gen'l Elec. spec'l.			257.35
15	Div. Int'l Harvester com.			891.67
15	Div. Gen'l Elec. com.			3,432.00S
Nov. 1	Div. Nat'l Carbon p.			1,530.67
	Ford. to RR 11	52,870.85	109,908.49	

[fol. 243]

EXHIBIT 48

Trust A/D John P. Wilson

Dated Mar. 12, 1913

For John P. Wilson Jr.

Pay all Inc. to beneficiary on request of two See Tst for A. W. D. T[10]
Pay to charities only on request of two See Tst. for A. W. D. T[10]
On Dec. 31st of each year surplus Inc. to Prin. See Tst. for A. W. D. T[10].
Coms
Prin. 1% at close
Inc. 2½% on 1st $6,666.66
1% on balance

			Principal	Income
1928				
		Fowd. R.R. 5	118,046.57	67,865.81
Oct.	27	Trans. to Princ		13,967.00
	27	U. S. Tr. Co. of N. Y. a/c loan	12,100.00	
	31	Subu. 266⅔ shs. Elec. Bd. & Sh. Sec. 90	24,000.00	
Nov.	1	Income		4,200.00
	28	Int. on loan to date U. S. Tr. Co. of N. Y.		172.32
Dec.	1	Income		5,400.00
	6	Income		4,200.00
	13	4th ¼ U. S. Inc. Tax 1927		1,205.24
	31	Trans. to princ		2,835.29
1929				
Jan.	2	Income		5,400.00
	30	U. S. Trust Co. of N. Y. a/c loan	2,900.00	
	30	U. S. Trust Co. of N. Y. Int. loan		24.97
	30	Trans. to princ		18.44

ALSO T[10] Tst for Martha 2½

			Principal	Income
1928				
Oct.	26	Fowd. from R.R. 5	118,033.69	87,194.68
	24	333⅓ rts. Elec. Bd. & Share Sec. Corp. @ 8-3/8-¾ c. & s.	2,764.44	
	24	33-1/3 shs. Amer. Car. & Fdy. Co. c. @ 91-1/5 c. & s.	3,025.34	
	24	133-1/3 shs. Amer. Car & Fdy. Co. c. @ 91-1/5 c. & s.	12,101.33	
	24	600 Rts. Elec. Bd. & Share Secs. Corp. @ 7-1/8 N	4,271.00	
	27	Trans. from Income	13,967.00	
Nov.	1	Div. Sou. Ry. com		2,666.66
	1	Div. Nat'l Carbon p		1,530.66
	15	Div. Sou. Calif. Edison c		200.00S
Dec.	1	Div. Int'l Harvester p		525.00
	1	Div. Studebaker Corp'n p		525.00
	6	Return payment 12/1		5,400.00

[fol. 244]

Feb.	1	Chas. D. Makepeace Treas. William College		8,333.33	Dec.	23	4.66/50 sh. International Harv. com. @ 322 N-S	30.04	
	1	Income		5,400.00		29	Div. U. S. Steel c		1,633.33
	14	Transfer stamps various	41.84			31	Div. Amer. Loco. p		170.33S
	28	Coms. on Princ	1,332.90		*1929				
	28	Transfer to Princ. as of 2/14/29 revocation of various securities		1,373.74	Jan.	2	Div. Union Carbide		9,000.00
Mar.	1	Income		5,400.00	*1928				
	11	Notary fee U. S. I. T. 1928		.25		2	Div. Amer. Car & Fdy. c		500.00
	12	1st ¼ U. S. I. Tax 1928	2,508.97		Dec.	31	Trans. from Income	2,835.29	
	12	1st ¼ U. S. I. Tax 1928 Notary fee	.25		1929				
	12	Coms. to trustee		1,351.25	Jan.	2	Div. Goodyear Tire & Rubber 1st p.		2,041.66
		Balance		6,324.10		15	Div. Amer. Tel. & Tel		175.50
						15	Div. Elect. Bd. & Share		500.00
						15	Div. Int'l Harvester c		1,839.16
						16	Div. Amer. Steel Fdrys. c		150.00
						25	Div. Gen. Elec. c		13,061.33
						25	Div. Gen. Elec. Spec		617.70
						30	Trans. from Income	18.44	S
					Feb.	1	Div. 765¹ shs. National Carbon Co. Inc. p		1,530.66
						1	Div. 1333¹ shs. Southern Railway Co. com		2,666.66
						15	Div. 400 shs. Southern Calif. Edison Co. com		200.00S
					*Mch.	1	Div. 300 shs. Int'l Harvester pfd		525.00
						1	Div. 300 shs. Studebaker pfd		525.00
					*Feb.	28	Transfer from Income	1,374.74	S
					Mch.	12	Int. to date T		294.41
							Balance %	2,509.22	
			160,930.53	133,472.74				160,930.53	133,472.74

[fol. 245]

EXHIBIT 48—Continued

			Principal	Income				Principal	Income
Mar.	12	Balance %	2,509.22		Mch.	12	Balance		6,324.10
Apr.	1	Income		5,400.00		15	Div. 75-1/3 shs. Brill Corp. Class "A"		113.00
	1	Trans. to Princ		2,509.22		30	Div. 97-1/3 sh. Amer. Loco. pfd.		170.33
	4	Notary fees		.50		30	Div. 933-1/3 sh. U. S. Steel com.		1,633.33S
	4	Notary fees		.25	Aprl.	1	Div. 333-1/3 sh. Amer. Car & Fdy. com		500.00
	12	Subn. 20 shs. Amer. Steel Foundries (No par) 40	800.00			1	Div. 1166-2/3 sh. Goodyear Tire & Rubber 1st pfd.		2,041.66
	12	Tsfer to Principal		800.00		1	Div. 6000 sh. Un. Carbide & Carbon		9,000.00
						1	Trans. from Income	2,509.22	
						15	Div. 78 sh. Amer. Tel. & Tel.		175.50
						15	Div. 200 sh. Amer. Steel Fdrys. com.		150.00
						15	Div. 2000 sh. Elec. Bd. & Share Sec. com.		500.00
						15	Div. 2942-2/3 sh. Int'l Harvester com.		1,839.16
						15	Tsfer. from Income	800.00	
						26	Div. 6530-2/3 s. General Elec. com.		6,530.66S
					May	1	Div. 432 s. Nat. Carbon pfd.		864.00
		Ford	3,309.22	8,709.97			Ford	3,309.22	29,841.74

EXHIBIT 49

Trust A/D John P. Wilson

Dated Mar. 12, 1913

For John P. Wilson Jr.

Pay all income to beneficiary on request of 2—See Tst for A. W. D. T.[10]
Pay to charities only on request of 2—See Tst for A. W. D. T.[10]
On Dec. 31st of each year surplus Inc. to Prin.—See Tst for A. W. D. T.[10]
Coms.
Prin. 1% at close
Inc. 2½% on first $6,666.66
1% on balance

1929		Principal	Income
	Ford		8,709.97
May 1	Income		5,400.00
17	Tsfer to principal for subn. So. Cal. Edison		1,000.00
20	Subn. 40 shs. Sou. Calif. Edison 25	1,000.00	
June 1	Income		5,400.00
6	12 rts. Amer. Tel. & Tel. @ 4-1/8	49.50	
13	2nd ¼ U. S. Inc. Tax 1928		2,508.96
20	Subn. to 133⅓ shs. U. S. Steel Corp. @ 140	18,666.66	
20	Tsfer to Princ		10,214.47
28	Tsfer. to Princ		1.69
28	Subn. 1500 Amer. Tel. & Tel. Conv. 4½s deb. @ par	1,500.00	
July 1	Income		5,400.00
16	Telegrams to Chicago		.20
19	⅓ cost of Telegram to J. P. Wilson Jr.		.29
19	Transfer stamps 333 shs. Amer. Car & Fdy	13.32	

ALSO T A/D for Martha 2½

1929		Principal	Income
	Ford		29,841.74
May 1	Div. 1333-1/3 Sou. Ry. com		2,666.66
15	Div. 400 shs. So'n Cal. Edison com		200.00
17	Tsfer. from Income for subn. So. Cal. Edison	1,000.00	S
June 1	Div. 300 Sh. Studebaker p		525.00
20	Tsfer. from Income	10,214.47	
20	Proceeds of Loan	8,500.00	
20	Int. a/c Cash pd. for 133-1/3 Sh. U. S. Steel c		26.66S
28	Tsfer. from Income	1.69	
29	Div. 933-1/3 Sh. U. S. Steel com		1,633.33
29	Div. 9733[33] Sh. Amer. Loco. pfd		170.33
July 1	Div. 333-1/3 Sh. Amer. Car & Fdy. com		500.00
1	Div. 1166-2/3 Sh. Goodyear Tire & Rub. 1st pfd		2,041.66
1	Div. 18000 Sh. Un. Carb. & Carb		11,700.00

[fol. 247]

EXHIBIT 49—Continued

1929		Principal	Income
July	22 ⅓ cost of Telegram to J. P. Wilson		.37
	30 Trans. Stamps 681 shs. Elec. Bd. &—Sh.—Sub. War	13.62	
	31 On a/c of Loan	8,500.00	58.08
Aug.	1 Income		7,400.00
	19 Subn. 333⅓ shs. Elec. Bd. & Share c. @ 85	28,333.33	
Sept.	3 Income		7,400.00
	13 3rd ¼ U. S. Inc. Tax 1928		2,508.97
	27 Transfer tax stamps 334 shs. Elec. Bd. & Share Co. c.	13.36	
Oct.	1 Income		7,400.00
	14 166⅔ shs. Inter'l Harvester com. @ 114 &c.	19,041.67	
	17 Teleg. J. P. W.—Chic. Ill.		.20
	21 Subn. 1440 shs. Union Carbide & Carbon @ 80	115,200.00	
	21 Trans. to Prin.		10,244.51
	29 66⅔ shs. Amer. Tel. & Tel. @ 240 & 3/10 c.	16,020.00	
	29 166⅔ shs. Amer. Tel. & Tel. @ 250 & 35/100 c.	41,725.00	
	29 66⅔ shs. Intl. Harv. com. @ 94¾ & 1/5 c.	6,330.00	
	29 66⅔ shs. Intl. Harv. com. @ 90 & 1/5 c.	6,013.33	
	30 66⅔ shs. Amer. Tel. & Tel. @ 225 & 3/10 c.	15,020.00	
	30 16⅔ shs. Amer. Tel. & Tel. @ 240 & 3/10 c.	4,005.00	
Nov.	1 Income		7,400.00
	4 16⅔ shs. Inter. Harvester Co. C. @ 90 & 1/5 c.	1,503.33	

1929		Principal	Income
July	15 Div. 78 Sh. Amer. Tel. & Tel.		175.50
	15 Div. 220 Shs. Amer. Steel Fdyrs. com.		165.00
	15 Div. 2942-2/3 Shs. Intl. Harv. com.		1,839.16
	23 133-1/3 Sh. Amer. Car & Fdry. C. @ 102-1/2—¼	13,628.00	
	23 33-1/3 Sh. Amer. Car & Fdry. C. @ 103—¼	3,423.67	
	Div.		
	26 6530-2/3 Sh. Gen. El. Com.		13,061.33
	24 66-2/3 Sh. Amer. Car & Fdry. Com. @ 102-1/2—1/4 c. & S.	6,814.00	
	24 33-1/3 Sh. Amer. Car & Fdry. Com. @ 102-1/4—1/4 c. & s.	3,398.67	
	24 66-2/3 Sh. Amer. Car & Fdry. Com. @ 102—1/4 c. & s.	6,780.67	
Aug.	1 Div. 432 Sh. Nat. Carbon p.		864.00
	1 Div. 1333-1/3 Sh. So'n Ry. Com.		2,666.66
	12 4000 Rts. El. Bond & Sh. @ 7-N-s	27,986.67	
	12 90 Rts. El. Bond & Sh. @ 8-N-s	719.70	
	15 Div. 440 Sh. So'n Cal. Edison		220.00S
Sept.	3 Div. 300 Sh. Studebaker p.		525.00
	28 Div. 1066-2/3 Sh. U. S. Steel Com.		1,866.67
	30 Div. 97-1/3 Sh. Amer. Loco. pfd.		170.33
Oct.	1 Div. 1166-2/3 Sh. Goodyear Tire & Rub. 1st pfd.		2,041.66
	1 Div. 18000 Sh. Un. Carb. & Carb.		11,700.00
	11 166-2/3 Sh. Elec. Bd. & Share Com. @ 180-1/4 c. s.	29,951.66	

[fol. 248]

Nov.	4	16⅔ shs. Inter. Harvester Co. C. @ 94-⅞ & 1/5 c.	1,584.58		Oct.	15	Div. 78 Sh. Amer. Tel. & Tel.	175.50
	18	16⅔ shs. Amer. Tel. & Tel. @ 225¾ & 3/10 c.	3,767.50			16	Div. 220 Sh. Amer. Steel Fdys. com.	165.00
Dec.	2	Income		7,400.00		16	Div. 2942-2/3 Sh. Int'l Harv. com.	1,839.16
	12	4th ¼ U. S. Income Tax 1928		2,508.96		18	166-2/3 Sh. Int'l Harvester com. @ 114.25 N.	19,041.67
	30	Notary fee a/c Refund U. S. Inc. Tax 1926		.25		18	2941-2/3 Sh. Int'l Harvester com. @ 17.21 N.	50,626.08
	31	Transfer to Principal		9,733.67		21	Trans. from Income	10,244.51
						25	Div. 6530-2/3 Sh. Gen. Elec. com.	6,530.66
						25	1 Sh. International Harvester Co. @ 17.21	17.21
					*Nov.	1	Div. 432 Sh. Nat. Carbon pfd	864.00
						1	Div. 1333-1/3 Sh. Sou'n Ry. com.	2,666.66
					*Oct.	29	Loan from U. S. Tr. Co.	96,400.00
					Nov.	15	Div. 440 Sh. Sou. Calif. Edison com.	220.00S
					Dec.	2	Div. 300 Sh. Studebaker pfd	525.00
						31*	Transfer from Income	9,733.67
						31	Div. 97-1/3 Sh. Amer. Loco. pfd	170.33
						30*	Div. 1066-2/3 Sh. U. S. Steel com.	2,933.34S
		Ford	288,300.20	100,690.59			Ford	298,482.34 100,690.34

[fol. 249]

EXHIBIT 50

Trust A/D John P. Wilson

Dated March 12, 1913

For Anna W. Dickinson

Pay all income to beneficiary on request of 2—See J. P. W. Jr. Tst T[10]
Pay to charities only on request of 2—See J. P. W. Jr. Tst T[10]
On Dec. 31st of each year. Surplus income to prin. See J. P. W. Jr. Tst T[10]
Coms.
Prin. 1% at close
Inc. 2½% on 1st $6,666.67
1% on balance

			Principal	Income
1928				
		Fowd. from RR 10	118,046.59	67,868.64
Oct.	27	Trans to Princ.		13,967.00
	27	U. S. Tr. Co. of N. Y. a/c loan	12,100.00	
	31	Subn. 266⅔ shs. Elec. Bd. & Sh. Sec. 90	24,000.00	
Nov.	1	Income		4,200.00
	28	Int. on loan to date U. S. Tr. Co. of N. Y.		172.32
Dec.	1	Income		5,400.00
	6	Income		4,200.00
	13	4th ¼ U. S. Inc. Tax 1927		1,206.37
	31	Trans. to prin.		2,836.49
1929				
Jan.	2	Income		5,400.00
	30	U. S. Trust Co. of N. Y. a/c loan	2,900.00	
	30	U. S. Trust Co. of N. Y. Int. loan		24.97
	30	Trans. to Prin.		17.26

ALSO T[10] Martha Tst 2½

			Principal	Income
1928				
Oct.	26	Fowd. from RR 10	118,033.70	87,199.81
	24	333-1/3 rts. Elec. Bd. & Share Sec. Corp. @ 8-3/8-3/40 c. & s.	2,764.44	
	24	33-⅓ shs. Amer. Car & Fdy. Co. c. @ 91-1/5 c. & s.	3,025.33	
	24	133-1/3 shs. Amer. Car & Fdy. Co. c. @ 91-1/5 c. & s.	12,101.33	
	24	600 rts. Elec. Bd. & Share Sec. Corp. @ 7-1/8 N.	4,271.00	
	27	Trans. from Income	13,967.00	
Nov.	1	Div. Sou. Ry. com.		2,666.67
	1	Div. Nat'l Carbon p.		1,530.67
	15	Div. Sou. Calif. Edison c.		200.00S
Dec.	1	Div. Int'l Harvester p.		525.00
	1	Div. Studebaker Corp'n p.		525.00
	6	Return payment 12/1		5,400.00
	28	4.66/50 Sh. International Harv. com. @ 322 N-S	30.04	

[fol. 250]

Feb.	1	Chas. D. Makepace Treas. William's College		8,333.33	Dec.	29	Div. U. S. Steel c	1,633.33
	1	Income		5,400.00		31	Div. Amer. Loco. p	170.34S
	14	Transfer stamps various	41.84		*1929			
	28	Coms. on Princ. as of 2/14/29 revocation of various securities	1,332.00		Jan.	2	Div. Union Carbide	9,000.00
	28	Transfer to Princ		1,374.74	*1928			
Mar.	1	Income		5,400.00		2	Div. Amer. Car & Fdy. Com	500.00
	11	Notary fee U. S. I. T. 1928		.25	Dec.	31	Trans. from Income	2,836.49
	12	1st ¼ U. S. I. Tax 1928	2,508.96		1929			
	12	U. S. I. Tax 1928 Notary Fee	.25		Jan.	2	Div. Goodyear Tire & Rubber p	2,041.67
	12	Coms. to trustee		1,351.25		15	Div. Amer. Tel. & Tel	175.50
		Balance		6,325.87		15	Div. Elec. Bd. & Share	500.00
						15	Div. Int'l Harvester c	1,839.17
						16	Div. Amer. Steel Fdrys c	150.00
						25	Div. Gen. Elec. c	13,061.33
						25	Div. Gen. Elec. spec	617.70
						30	Trans. from Income	17.26 S
					Feb.	1	Div. 765⁴ Shs. National Carbon Co., Inc. p	1,530.67
						1	Div. 1333³ Shs. Southern Railway Co. com	2,666.67
						15	Div. 400 Shs. Southern Calif. Edison Co. c	200.00S
					*Mch.	1	Div. 300 Shs. Int'l Harvester pfd	525.00
						1	Div. 300 Shs. Studebaker pfd	525.00
					*Feb.	28	Transfer from Income	1,374.74 S
					Mch.	12	Balance a/c	2,509.21
						12	Int. to date T	294.96
			160,939.54	133,478.49				160,930.54 133,478.49

167

[fol. 251]

EXHIBIT 50—Continued

1929		Principal	Income
Mar.	12 Balance A/D	2,509.21	
Apr.	1 Income		5,400.00
	1 Trans. to Princ		2,509.21
	4 Notary fee Claim for Refund 1924 & 5		.50
	4 Notary fee		.25
	12 Subn. 20 shs. Amer. Steel Foundries (No par) c. 40	800.00	
	15 Tsfer. to Principal		800.00
	Ford	3,309.21	8,709.96

1929		Principal	Income
Mch.	12 Balance		6,325.87
	15 Div. 75-1/3 shs. Brill Bros. Class "A"		113.00
	30 Div. 97-1/3 shs. Amer. Loco. pfd		170.34
	30 Div. 933-1/3 shs. U. S. Steel com		1,633.33S
Apl.	1 Div. 333-1/3 shs. Amer. Car & Fdy. com		500.00
	1 Div. 1166-2/3 shs. Goodyear Tire & Rubber Co. 1st pfd		2,041.67
	1 Div. 6000 Union Carbide & Carbon		9,000.00
	1 Trans. from Income	2,509.21	
	15 Div. 78 shs. Amer. Tel. & Tel		175.50
	15 Div. 200 shs. Amer. Steel Fdrys. com		150.00
	15 Div. 2000 shs. Elec. Bd. & Share Sec. com		500.00
	15 Div. 2942-2/3 shs. Int'l Harvester com		1,839.17
	15 Tsfer. from Income	800.00	S
	26 Div. 6530-2/3 shs. General Elec. com		6,530.67S
May	1 Div. 432 shs. Nat. Carbon pfd		864.00
	1 Div. 1333-1/2 shs. So'n Ry. com		2,666.67
	Ford	3,309.21	32,510.22

[fol. 252]

EXHIBIT 51

Trust A/D John P. Wilson

Dated Mar. 12, 1913

For Anna W. Dickinson

Pay all income to beneficiary on request of 2—See J. P. W. Jr. Tst. T[10]
Pay to charities only on request of 2—See J. P. W. Jr. Tst. T[10]
On Dec. 21st in each year Surplus Inc. to Prin.—See J. P. W. Jr. Tst. T[10]
Coms.
Prin. 1% at close
Inc. 2½% on 1st $6,666.67
1% on Balance

1929		Principal	Income
	Ford		8,709.96
May 1	Income		5,400.00
17	Tsfer. to principal		1,000.00
20	Subn. 40 shs. Sou. Calif. Edison 25	1,000.00	
June 1	Income		5,400.00
6	12 rts. Amer. Tel. & Tel. @ 4-1/8	49.50	
13	2nd ¼ U. S. Inc. Tax		2,508.95
20	Sub'n to 133⅓ shs. U. S. Steel Corp. com. @ 140	18,666.76	
20	Tsfr. to Prin.		10,216.31
28	Sub'n 1500 Amer. Tel. & Tel. Conv. 4½s deb. @ par	1,500.00	
July 1	Income		5,400.00
16	Telegram to Chicago		.20
19	⅓ cost of Telegram to J. P. Wilson, Chicago		.30

[fol. 253]

19	Transfer stamps 333 shs. Amer. Car & Fdy	13.32	
22	Telegram to J. P. Wilson (⅓ cost)		.38

ALSO T[10] Martha Tst: 2½

		Principal	Income
	Ford		32,510.22
May 15	Div. 400 shs. So'n Cal. Edison com.		200.00
17	Tsfer. from Income for subn. Sou. Cal. Edison	1,000.00	S
June 1	Div. 300 sh. Studebaker p		525.00
20	Tsfer. from Income	10,216.31	
20	Proceeds of Loan	8,500.00	
20	Int. % Cash Pd. for 133-1/3 sh. U. S. Steel c		26.67S
29	Div. 933-1/3 sh. U. S. Steel com		1,633.33
29	Div. 9733/4 sh. Amer. Loco. pfd		170.34
July 1	Div. 333-1/3 sh. Amer. Car & Fdy. com.		500.00
1	Div. 1166-2/3 sh. Goodyear Tire & Rub. 1st pfd		2,041.67
1	Div. 18000 sh. Un. Carb. & Carb		11,700.00
15	Div. 78 sh. Amer. Tel. & Tel.		175.50
15	Div. 2942-2/3 sh. Int'l Harv. com.		1,839.17

169

EXHIBIT 51—Continued

			Principal	Income
July	30	Transfer Stamps 682 shs. Elec. Bd. & Sh. Sub. War	13.64	
	31	On a/c of Loan	8,500.00	58.08
Aug.	1	Income		7,400.00
	19	Subn. 333⅓ sh. Elec. Bd. & Share c. @ 85	28,333.34	
Sept.	3	Income		7,400.00
	13	3rd ¼ U. S. Inc. Tax 1928		2,508.95
	27	Transfer tax stamps 333 shs. Elec. Bd. & Share c	13.32	
Oct.	1	Income		7,400.00
	14	166⅔ shs. Int. n Harvester com. @ 114 &c	19,041.67	
	17	Teleg. to J. P. Wilson—Chic., Ill		.20
	21	Subn. 1440 shs. Union Carbide & Carbon @ 80	115,200.00	
	21	Trans. to Prin		10,244.36
	29	66⅔ shs. Amer. Tel. & Tel. @ 240 & 3/10 c	16,020.00	
	29	166⅔ shs. Amer. Tel. & Tel. @ 250 & 35/100 c	41,725.00	
	29	36⅔ shs. Intl. Harv. com. @ 90¾ & 1/5 c	6,330.00	
	29	66⅔ shs Intl. Harv. com. @ 90 & 1/5 c	6,013.33	
	30	66⅔ shs. Amer. Tel. & Tel. @ 225 & 3/10 c	15,020.00	
	30	16⅔ shs. Amer. Tel. & Tel. @ 240 & 3/10 c	4,005.00	
[fol. 254]				
Nov.	1	Income		7,400.00
	4	16⅔ shs. Inter. Harvester Co. @ 90 & 1/5 c	1,503.33	
	15	Div. 220 sh. Amer. Steel Fdys. com		165.00
	23	133-1/3 sh. Amer. Car & Fdry C. @ 102-1/2—1/4 c. & s	13,628.00	
	23	33-1/3 sh. Amer. Car & Fdry. Co. @ 103—1/4 c. & s	3,423.67	
		Div.		
	26	6530-2/3 sh. Gen. El. com		13,061.33
	24	66-2/3 sh. Amer. Car & Fdry. Com. @ 102-1/2—1/4 c. & s	6,814.00	
	24	33-1/3 sh. Amer. Car & Fdry. Com. @ 102-1/4—1/4 c. & s	3,398.67	
	24	66-2/3 sh. Amer. Car & Fdry. Com. @ 102—1/4 c. & s	6,780.67	S
Aug.	1	Div. 432 sh. Nat. Carbon p		864.00
	1	Div. 1333-1/3 sh. So'n Ry. Com		2,666.67
	12	4000 Rts. El. Bond & Share @ 7-N-3	27,986.66	
	12	90 Rts. El. Bond & Share @ 8-N-5	719.70	
	15	Div. 440 sh. So'n Cal. Edison c		220.00S
Sept.	3	Div. 300 sh. Studebaker p		525.00
	28	Div. 1066-2/3 sh. U. S. Steel com		1,866.67S
	30	Div. 97-1/3 sh. Amer. Loco. pfd		170.34
Oct.	1	Div. 1166-2/3 sh. Goodyear Tire & Rub. 1st pfd		2,041.67
	1	Div. 18000 sh. Un. Carb. & Carb		11,700.00
	11	166-2/3 sh. Elec. Bd. & Share com. @ 180—1/4 c. s	29,951.67	
Oct.	15	Div. 78 sh. Amer. Tel. & Tel		175.50
	16	Div. 220 sh. Amer. Steel Fdys. com		165.00

Nov.	4	16⅔ shs. Inter. Harvester Co. @ 9478 & 1/5 c	1,584.58			16	2942-2/3 sh. Int'l Harv. com	1,839.17
	18	16⅔ shs. Amer. Tel. & Tel. @ 225¾ & 3/10 c	3,767.50			18	166-2/3 sh. Int'l Harvester com. @ 114.25 N	19,041.67
Dec.	2	Income		7,400.00		18	2941-2/3 sh. Int'l Harvester com. @ 17.21 N	50,626.08
	12	4th ¼ U. S. Income Tax 1928		2,508.95		21	Trans. from Inc	10,244.36
	30	Notary fee a/c Refund U. S. Inc. Tax 1926		.25		25	Div. 6530-2/3 sh. Gen. Elec. com	6,530.67
	31	Transfer to Principal		9,735.62		25	1 sh. International Harvester @ 17.21	17.21
					*Nov.	1	Div. 432 sh. Nat. Carbon pfd	864.00
						1	Div. 1333-1/3 sh. Sou'n Ry. com	2,666.67
					*Oct.	29	Loan from U. S. Tr. Co	96,400.00 S
					Nov.	15	Div. 440 sh. Sou. Calif. Edison com	220.00S
					Dec.	2	Div. 300 sh. Studebaker pfd	525.00
						31*	Transfer from Income	9,735.62
						31	Div. 97-1/3 sh. Amer. Loco, pfd	170.34
						30*	Div. 1066-2/3 sh. U. S. Steel com	2,933.33
					1930			
					Jan.	2	Int. 1500 Amer. Tel. & Tel. 4-1/2s T.	33.75
						2	Div. 1166-2/3 sh. Goodyear Tire & Rubber 1st pfd	2,041.67
						2	Div. 19440 sh. Un. Carb. & Carb	12,636.00S
		Ford	288,300.20	100,692.51			Ford	298,484.29 115,403.68

[fol. 255]

EXHIBIT 52

Trust A/D John P. Wilson

Dated Mar. 12, 1913

Martha Wilson Trust

Pay John P. Wilson Jr. ½ each on request of both
Anna W. Dickinson
Pay Charities only on request of both
On Dec. 31st of each year, surplus Inc. to Prin.
Coms. Prin. 1% at close
Incs. 2½% on first $6,666.67
1% on balance

1928		Principal	Income
Oct. 26	Fowd. from RR 15	118,046.57	67,865.25
27	Trans to Prin.		13,967.00
27	U. S. Tr. Co. of N. Y. a/c loan	12,100.00	
31	Subn. 266⅔ shs. Elec. Bd. & Sh. Sec. 90	24,000.00	
Nov. 1	Anna W. Dickinson		2,100.00
1	John P. Wilson Jr.		2,100.00
28	Int. on loan to date U. S. Tr. Co. of N. Y.		172.32
Dec. 1	Anna W. Dickinson		2,700.00
1	John P. Wilson Jr.		2,700.00
6	John P. Wilson Jr.		2,100.00
6	Anna W. Dickinson		2,100.00
13	4th ¼ U. S. Inc. Tax 1927		1,205.25
31	Trans. to princ.		2,834.50

ALSO T U/D for A. W. D. T U/D J. P. W. Jr. 2½

1928		Principal	Income
Oct. 26	Fowd. from RR 15	118,033.68	87,193.31
24	333⅓ rts. Elec. Bd. & Share Secs. Corp. @ 8-3/8—3/40 c. & s.	2,764.44	
24	33⅓ shs. Amer. Car & Fdy. Co. com. @ 91—1/5 c. & s.	3,025.33	
24	133⅓ shs. Amer. Car & Fdy. Co. com. @ 91—1/5 c. & s.	12,101.34	
24	600 Rts. Elec Bd. & Share Secs. Corp. @ 7-1/8 N.	4,271.00	
27	Trans. from Income	13,967.00	
Nov. 1	Div. Sou. Ry. com.		2,666.67
1	Div. Natl. Carbon p.		1,530.67
15	Div. Sou. Calif. Edison c.		200.00
Dec. 1	Div. Intl. Harvester p.		525.00
1	Div. Studebaker Corpn. p.		525.00

[fol. 256]

1929				Dec.	6	Return payment 12/1 A. W. D.	2,700.00
Jan.	2	Income A. W. Dickinson	2,700.00		6	Return payment 12/1 J. P. W. Jr.	2,700.00
	2	John P. Wilson Jr.	2,700.00		27	4.66/50 shs. International Harv. com. @ 322 N-s	30.04
	30	U. S. Trust Co. of N. Y. a/c loan	2,900.00		29	Div. U. S. Steel c.	1,633.34
	30	U. S. Trust Co. of N. Y. Int. loan	24.98		31	Div. Amer. Loco. p.	170.33S
	30	Tsfer. to prin.	19.24	1929			
Feb.	1	Chas. D. Makepeace, Treas. William's College	8,333.34	Jan.	2	Div. Union Carbide	9,000.00
	1	Anna W. Dickinson	2,700.00		2	Div. Amer. Car & Fdy. c.	500.00
	1	John P. Wilson Jr.	2,700.00	*1928			
	14	Transfer stamps various	41.84	Dec.	31	Trans. from income	2,834.50
	28	Coms. on Princ.	1,332.91	1929			
	28	Transfer to Princ. as of 2/14/29 revocation of various securities	1,374.75	Jan.	2	Div. Goodyear Tire & Rubber 1st p.	2,041.67
Mar.	1	Anna W. Dickinson	2,700.00		15	Div. Amer. Tel. & Tel.	175.50
	1	John P. Wilson Jr.	2,700.00		15	Div. Elect. Bd. & Share c.	500.00
	11	Notary fee U. S. I. T. 1928	.25		15	Div. Intl. Harvester c.	1,839.17
	12	1st ¼ U. S. I. Tax 1928	2,508.97		16	Div. Amer. Steel Fdrys.	150.00
	12	1st ¼ U. S. I. Tax 1928 Notary	.25		25	Div. Genl. Elec. spec.	617.70
	12	Coms. to trustee	1,351.25		25	Div. Genl. Elec. c.	13,961.34
		Balance	6,323.29		30	Tsfer. from Income	19.24 S
				Feb.	1	Div. 1333⅓ shs. Southern Railway Co. com.	2,666.67
					1	Div. 7653 shs. National Carbon Co. Inc. p.	1,530.67
					15	Div. 400 shs. Southern Calif. Edison Co. c.	200.00S
				*Mar.	1	Div. 300 shs. Intl. Harvester pfd.	525.00
					1	Div. 300 shs. Studebaker pfd.	525.00
				*Feb.	28	Transfer from Income	1,374.75 C
				Mar.	12	Int. to date T.	294.38
						Balance A/D	2,509.22
		160,930.54	133,471.42				160,930.54 133,471.42

[fol. 257]

EXHIBIT 52—Continued

			Principal	Income
Mar.	12	Balance A/D	2,509.22	
	20	Notary fee death of beneficiary		1.00
Apr.	1	Anna W. Dickinson		2,700.00
	1	John P. Wilson		2,700.00
	1	Trans. to Princ.		2,509.22
	4	Notary fees		.50
	4	Notary fees		.25
	12	Subn. 20 shs. Amer. Steel Foundries (No par) 40 c	800.00	
	15	Tsfer. to Principal		800.00
		Forward	3,309.22	8,740.97

			Principal	Income
Mar.	12	Balance		6,323.29
	15	Div. 75⅓ shs. Brill Corp. Class "A"		113.00
	30	Div. 97⅛ shs. Amer. Loco. pfd.		170.33
	30	Div. 933⅛ shs. U. S. Steel com.		1,633.34
Apr.	1	Div. 333⅓ shs. Amer. Car & Fdy. com.		500.00
	1	Div. 6000 shs. Un. Carbide & Carbon		9,000.00
	1	Div. 1166⅔ shs. Goodyear Tire & Rubber 1st pfd.		2,041.67
	1	Trans. from Income	2,509.22	
	15	Div. 78 shs. Amer. Tel. & Tel.		175.50
	15	Div. 200 shs. Amer. Steel Fdrys. com.		150.00
	15	Div. 2000 shs. Elec. Bd. & Share Sec. com.		500.00
	15	Div. 2942⅔ shs. Intl. Harvester com.		1,839.17
	15	Tsfer. from Income	800.00	
	26	Div. 6530⅗ General Elect. com.		6,530.678
		Forward	3,309.22	28,976.97

[fol. 258]

EXHIBIT 53

Trust A/D John P. Wilson

Dated Mar. 12, 1913

Martha Wilson Trust

Pay John P. Wilson ½ each on request of both
Anna W. Dickinson
Pay Charities only on request of both
On Dec. 31st of each year, surplus Inc. to Prin.
Coms. Prin. 1% at close
Inc. 2½% on first $6,666.67
1% on balance

			Principal	Income
1929				
		Forward	3,309.22	8,710.97
May	1	Anna W. Dickinson		2,700.00
	1	John P. Wilson Jr.		2,700.00
	17	Tsfer. to princ.		1,000.00
	20	Subn. 40 shs. Sou. Calif. Edison 25	1,000.00	
June	1	Anna W. Dickinson		2,700.00
	1	John P. Wilson Jr.		2,700.00
	6	12 rts. Amer. Tel. & Tel. @ 4⅛	49.50	
	13	2nd ¼ U. S. Inc. Tax 1928		2,508.97
	20	Subn. to 133⅓ shs. U. S. Steel Corp. com. @ 140	18,666.67	
	20	Tsfer. to Princ.		10,212.70
	28	Tsfer. to Princ.		3.47
	28	Subn. 1500 Amer. Tel. & Tel. Conv. 4½s deb. @ par J. P. & A. W. D.	1,500.00	
July	1	Anna W. Dickinson		2,700.00
	1	John P. Wilson Jr.		2,700.00
	16	Telegram to Chicago		.20

ALSO T U/D for A. W. D. T U/D J. P. W. Jr. 2½

			Principal	Income
		Forward	3,309.22	28,976.97
1929				
May	1	Div. 432 shs. Nat. Carbon pfd.		864.00
	1	Div. 1333⅓ shs. Sou. Ry. com.		2,666.67
	15	Div. 400 shs. Sou. Cal. Edison com.		200.00
	17	Tsfer. from Income for subn. So. Cal. Edison	1,000.00	S
June	1	Div. 300 shs. Studebaker p.		525.00
	20	Tsfer. from Income	10,212.70	
	20	Proceeds of Loan	8,500.00	
	20	Int. on a/c Cash Paid for 133⅓ shs. U. S. Steel c.		26.678.
	28	Tsfer. from Income	3.47	
	29	Div. 933⅓ shs. U. S. Steel com.		1,633.34
	29	Div. 9733⅓ shs. Amer. Loco. pfd.		170.33
July	1	Div. 333⅓ shs. Amer. Car & Fdy. com.		500.00
	1	Div. 1166⅔ shs. Goodyear Tire & Rubber 1st pfd.		2,041.67

175

EXHIBIT 53—Continued

		Principal	Income
July	19 ⅛ cost of Telegram to J. P. Wilson, Chicago, Ill.		.29
	19 Transfer stamps 334 shs. Amer. Car & Fdy.	13.36	
	22 ⅛ cost of Telegram to J. P. Wilson		.38
	30 Trans. stamps 682 shs. Elec. Bd. & Sh. Sub. War.	13.64	
	31 On a/c of loan	8,500.00	58.09
[fol. 259]			
Aug.	1 Anna W. Dickinson		3,700.00
	1 John P. Wilson Jr.		3,700.00
	19 Subn. 333⅓ shs. Elec. Bd. & Share c. @ 85	28,333.33	
Sept.	3 Anna W. Dickinson		3,700.00
	3 John P. Wilson Jr.		3,700.00
	13 3rd ¼ U. S. Inc. Tax 1928		2,508.97
	27 Transfer tax stamps 333 shs. Elec. Bd. & Share Co. c.	13.32	
Oct.	1 Anna W. Dickinson		3,700.00
	1 John P. Wilson Jr.		3,700.00
	14 166⅔ shs. Int. Harvester com. @ 114 &c.	19,041.66	
	17 Teleg. to J. P. Wilson—Chic., Ill.		.20
	21 Subn. 1440 shs. Union Carbide & Carbon @ 80	115,200.00	
	21 Trans. to Prin.		10,244.54
	29 66⅔ shs. Amer. Tel. & Tel. @ 240 &3/10 c.	16,020.00	
	29 166⅔ shs. Amer. Tel. & Tel. @ 250 & 35/100 c.	41,725.00	
	29 66⅔ shs. Intl. Harv. com. @ 90¾		
	1 Div. 18000 shs. Un. Carb. & Carb.		11,700.00
	15 Div. 78 shs. Amer. Tel. & Tel.		175.50
	15 Div. 220 shs. Amer. Steel Fdys. com.		165.00
	15 Div. 2942⅔ shs. Intl. Harv. com.		1,839.17
	23 133⅓ shs. Amer. Car & Fdry. C. @ 102½—¼ c. & s.	13,628.00	
	23 33⅓ shs. Amer. Car & Fdry. C. @ 103—¼ c. & s.	3,423.66	
	26 Div. 6530⅔ shs. Gen. Elec. com.		13,061.34
	24 66⅔ shs. Amer. Car & Fdry. com. @ 102½—¼ c. & s.	6,814.00	
	24 33⅓ shs. Amer. Car & Fdry. com. 102¼ c. & s.	3,398.66	
	24 66⅔ shs. Amer. Car & Fdry. com. @ 102 c. & s.	6,780.66	
Aug.	1 Div. 432 shs. Nat. Carbon p.		864.00
	1 Div. 1333⅓ shs. Sou. Ry. Co.		2,666.67
	12 4000 Rts. El. Bond & Sh. @ T-N-s.	27,986.67	
	12 90 Rts. El. Bond & Sh. @ 8-N-s.	719.70	
	15 Div. 440 shs. Sou. Cal. Edison C.		220.00
Sept.	3 Div. 300 shs. Studebaker p.		525.00
	28 Div. 1066⅔ shs. U. S. Steel com.		1,866.66
	30 Div. 97⅓ shs. Amer. Loco. pfd.		170.33
Oct.	1 Div. 1166⅔ shs. Goodyear Tire & Rub. 1st pfd.		2,041.67
	1 Div. 18000 shs. Un. Carb. & Carb.		11,700.00
	11 160⅔ shs. Elec. Bd. & Share com. @ 180—¼ cs.	29,951.67	
	15 Div. 78 shs. Amer. Tel. & Tel.		175.50
	16 Div. 220 shs. Amer. Steel Fdys. com.		165.00

		& 1/5 c	6,330.00				
	29	66⅔ shs. Intl. Harv. com. @ 90 & 1/5 c	6,013.34				
	30	66⅔ shs. Amer. Tel. & Tel. @ 225 & 3/10 c	15,020.00				
	30	16⅔ shs. Amer. Tel. & Tel. @ 240 & 3/10 c	4,005.00				
Nov.	1	A. W. Dickinson		3,700.00			
	1	J. P. Wilson Jr		3,700.00			
	4	16⅔ shs. Inter. Harvester Co. @ 90 & 1/5 c	1,503.34				
	4	16⅔ shs. Inter. Harvester Co. @ 94⅞ & 1/5 c	1,584.58				
	18	16⅔ shs. Amer. Tel. & Tel. @ 225¾ & 3/10 c	3,767.50				
Dec.	2	Anna W. Dickinson		3,700.00			
	2	John P. Wilson Jr		3,700.00			
		Forward	291,609.47	88,448.78			

	16	Div. 2942⅔ shs. Intl. Harv. com					1,839.17
	18	166⅔ shs. Intl. Harvester com. @ 114¼ N		19,041.66			
	18	2941⅔ shs. Intl. Harvester com. @ 17¹¹ N		50,626.09			
	21	Trans. from Income		10,244.54			
	25	Div. 6530⅔ shs. Gen. Elec. com					6,530.67
	25	1 sh. International Harvester C. @ 17.21		17.21			
Nov.	1	Div. 432 shs. Nat. Carbon pfd					864.00
	1	Div. 1333⅓ shs. Sou. Ry. com					2,666.67
Oct.	29	Loan from U. S. Tr. Co		96,400.00			8
Nov.	15	Div. 440 shs. Sou. Calif. Edison com.					220.008
Dec.	2	Div. 300 shs. Studebaker pfd					525.00
		Forward		292,057.91			97,586.00

[fol. 260] EXHIBIT 54

This exhibit consists of three sheets headed as indicated below with debit entries on the left and credit entries on the right:

(Sheet 1)

Under deed of John P. Wilson for John P. Wilson, Jr.

(Debit Entries)

1924			
July 1	Income		$2,000.00
" 17	16⅔ shs. United States Steel Com. @ 83.13 plus stamps	$1,384.83	
" 17	100 shs. do. @ 87.15 plus stamps	8,711.00	
" 17	Transfer stamps 116⅔ shs. United States Steel com	4.67	
" 17	Transfer to Principal		10,100.50
" 31	Balance		2,387.41
		$10,100.50	$14,487.91

(Credit Entries)

1924			
June 30	Balance		$1,057.81
" 30	Div., American Locomotive Works pfd		170.33
July 1	Div., Union Carbide & Carbon		8,678.75
" 15	Div., General Electric com		3,432.00
" 15	Div., General Electric special		257.35
" 15	Div., International Harvester com		891.67
" 17	Transfer from Income	$10,100.50	
		$10,100.50	$14,487.91

1924		
July 31	Balance	$2,387.41

[fol. 261] (Sheet 2)

Under deed of John P. Wilson for Anna W. Dickinson

(Debit Entries)

1924			
July 1	Income		$ 2,000.00
" 17	16⅔ shs. United States Steel com. @ 83.13 plus stamps	$ 1,384.84	
" 17	100 shs. do @ 87.15 do	8,711.00	
" 17	Transfer stamps United States Steel com. (116⅔ shs.)	4.67	
" 17	Transfer to Principal		10,100.51
" 31	Balance		2,387.48
		$10,100.51	$14,487.99

(Credit Entries)

1924				
June 30	Balance			$ 1,057.89
" 30	Div., American Locomotive Works pfd.			170.34
July 1	" Union Carbide & Carbon			8,678.75
" 15	" General Electric com.			3,432.00
" 15	" do. special			257.35
" 15	" International Harvester com.			891.67
" 17	Transfer from Income	$10,100.51		
		$10,100.51		$14,487.99
1924				
July 31	Balance			$ 2,387.48

[fol. 262] (Sheet 3)

Under deed of John P. Wilson for Martha Wilson

1924	(Debit Entries)		
July 1	A. W. Dickinson		$ 1,000.00
" 1	John P. Wilson, Jr.		1,000.00
" 17	16⅔ shs. United States Steel com. @ 83.13 plus stamps	$ 1,384.83	
" 17	100 shs. do. @ 87.15 do	8,711.00	
" 17	Transfer stamps 116⅔ shs. United States Steel com.	4.66	
" 17	Transfer to Principal		10,100.49
" 31	Balance		2,387.69
		$10,100.49	$14,488.18

1924	(Credit Entries)		
June 30	Balance		$ 1,058.09
" 30	Div., American Locomotive Work pfd.		170.33
July 1	" Union Carbide & Carbon		8,678.75
" 15	" General Electric com.		3,432.00
" 15	" do. special		257.35
" 15	" International Harvester com.		891.66
" 17	Transfer from Income	$10,100.49	
		$10,100.49	$14,488.18
1924			
July 31	Balance		$ 2,387.69

[fol. 263] EXHIBIT 55

This exhibit consists of three sheets headed as indicated below with debit entries on the left and credit entries on the right:

(Sheet 1)

Under deed of John P. Wilson for John P. Wilson, Jr.

(Debit Entries)

1929			
Feb. 1	Charles D. Makepeace, Treasurer, Williams College		$ 8,333.33
" 1	Income		5,400.00
" 14	Transfer stamps various	$41.84	
" 28	Commission Principal	1,332.90	
" 28	Transfer to Principal as of 2/14/29 revocation of various securities		1,374.74
" 28	Balance		11,731.19
		$ 1,374.74	$26,839.26

(Credit Entries)

1929			
Jan. 31	Balance		$22,441.94
Feb. 1	Div., 765 shs. National Carbon Co., Inc., pfd.		1,530.66
" 1	Div., 1333.3 shs. Southern Rway. Co. com.		2,666.66
" 15	" 400 shs. Southern California Edison Co. com.		200.00
" 28	Transfer from Income	$ 1,374.74	
		$ 1,374.74	$26,839.26

1929		
Feb. 28	Balance	$11,731.19

[fol. 264] (Sheet 2)

Under deed of John P. Wilson, dated March 12, 1913, for Anna W. Dickinson

(Debit Entries)

1929				
Feb.	1	Chas. D. Makepeace, Treasurer Williams College		$ 8,333.33
"	1	Income		5,400.00
"	14	Transfer stamps, various	$ 41.84	
"	28	Commission on Principal, revocation of various securities, as of 2/14/29	1,332.90	
"	28	Transfer to Principal		1,374.74
"	28	Balance		11,732.41
			$1,374.74	$26,840.48

(Credit Entries)

1929				
Jan.	31	Balance		$22,443.14
Feb.	1	Div., 765⅓ shs. National Carbon Co., Inc. preferred		1,530.67
"	1	Div., 1333⅓ shs. Southern Ry. Co.		2,666.67
"	15	" 400 shs. Southern California Edison Co.		200.00
"	28	Transferred from Income	$ 1,374.74	
			$1,374.74	$26,840.48

1929
Feb. 28 Balance $11,732.41

[fol. 265] (Sheet 3)

Under deed of John P. Wilson Martha Wilson Trust

(Debit Entries)

1929			
Feb. 1	Charles D. Makepeace, Treasurer Williams College		$8,333.34
" 1	Anna W. Dickinson		2,700.00
" 1	John P. Wilson, Jr.		2,700.00
" 14	Transfer stamps, various	$41.84	
" 28	Commissions on Principal	1,332.91	
" 28	Transfer to Principal as of 2/14/29 revocation of various securities		1,374.75
" 28	Balance		11,730.41
		$1,374.75	$26,838.50

(Credit Entries)

1929			
Jan. 31	Balance		$22,441.16
Feb. 1	Div., 1333⅓ shs. Southern Railway Co., com.		2,666.67
" 1	Div., 765⅓ shs. National Carbon Co., pfd.		1,530.67
" 15	Div. 400 shs. Southern California Edison Co., com.		200.00
" 28	Transfer from Income	$1,374.75	
		$1,374.75	$26,838.50

1929		
Feb. 28	Balance	$11,730.41

[fol. 266] EXHIBIT 56

Wilson, McIlvaine, Hale & Templeton,

1605 Marquette Building,

Chicago

December twenty-eighth 1922.

United States Trust Company of New York,
45 Wall Street,
New York City, New York.

GENTLEMEN:

Referring to the trust which you are conducting under deed of trust of John P. Wilson bearing date March 12, 1913, I wish to call your attention to the last paragraph of the amendment to said indenture of trust bearing date December 13, 1920, which reads in part as follows:

"So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause shall be added to and form a part of the principal of the separate trust estate from which it was derived."

In accordance with the clause which I have just quoted, I would appreciate your having proper entries made on your books, as of December 31, 1922, and on the thirty-first of December in each year thereafter, showing that all of the net income on hand on each December 31st was transferred to the principal of the separate trusts from which the in-[fol. 267] come was derived. I should like to have the statements rendered to me show that this has been done so that the provisions of the trust as amended may be strictly carried out.

Thanking you for your attention to this matter, I am
Yours very truly, (Signed) John P. Wilson, Jr.

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Robert H.

Jackson, Assistant General Counsel for the Bureau of Internal Revenue, attorney for the Commissioner of Internal Revenue.

Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue.

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned as attorney for the respondent on review.

——— ———, Attorney for Respondent on Review, Member, United States Board of Tax Appeals.

Approved & ordered filed August 2, 1934.

Ernest H. Van Fosson, Member A. L. S.

[fol. 268] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

[Title omitted]

PRÆCIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the Circuit Court of Appeals for the Second Circuit, heretofore filed by the Commissioner of Internal Revenue:

[fol. 269] 1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:

(a) Petitions filed February 17, 1931, May 1, 1931 and September 12, 1931, including the annexed copies of deficiency letters dated December 20, 1930, March 7, 1931 and August 17, 1931, and the trust indenture dated March 12, 1913 with amendments thereto dated September 21, 1918, June 9, 1919 and December 1, 1920, marked Exhibit B and attached to the petition bearing Docket No. 59919.

(b) Answers filed April 18, 1931, July 6, 1931, and November 9, 1931.

3. Opinions, decisions and orders of the Board:

(a) Memorandum opinion entered November 15, 1933.

(b) Three decisions entered November 16, 1933.

4. Commissioner's petition for review and assignments of error filed February 9, 1934.

5. Notice of filing petition for review and assignments of error, dated February 10, 1934, together with acknowledgements of service.

6. Statement of the evidence as settled and allowed.

[fol. 270] 7. Orders enlarging time for preparation of the evidence and for the transmission and delivery of the record.

8. This præcipe.

(Signed) Robert H. Jackson, General Counsel, Bureau of Internal Revenue, Attorney for Petitioner on Review.

Service of copy of the within præcipe is hereby admitted this 7 day of July, 1934.

(Seal) John Wilson, (Seal) Chas. Judson, Attorneys for Respondent on Review.

[fol. 271] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 272] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1934

No. 199

Argued Feb. 8, 1935. Decided March 4, 1935.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under Deed of Trust of John F. Wilson, Respondent

Appeal from the Board of Tax Appeals

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

Petition for review of decision of the United States Board of Tax Appeals. The Commissioner of Internal Revenue files the petition. Decision reversed.

Frank J. Wideman, Asst. Atty. Gen., and Sewall Key and John MacC. Hudson, Sp. Assts. to Atty. Gen., for petitioner.

E. Sheldon Stewart, of New York City, and John P. Wilson and Clay Judson, both of Chicago, Ill., for respondent.

MANTON, Circuit Judge.

Pursuant to sections 1002, 1003, of the Revenue Act of 1926, c. 27, 44 Stat. 9, 109, 110 (26 USCA §§ 1225, 1226), and section 1001, as amended by section 1101 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169 (26 USCA § 1224 (a), the petitioner seeks a review of the Board of Tax Appeals decision holding that John P. Wilson, by a deed of trust dated March 12, 1913, whereby he transferred in trust certain stocks for the benefit of his three children, and by later amending the trust agreement on three different occasions, created three trusts, not one as claimed by the petitioner, and that there were three taxable entities. The sole question presented here is whether there remained but one trust after the several amendments of the trust agreement.

By the trust agreement of March 12, 1913, the grantor's

three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson, became beneficiaries under the trust created by the transfer of certain stocks. The trustee was authorized to receive the income, to sell any of the securities and reinvest the proceeds in accordance with written instructions of two of the beneficiaries, and to vote all stock held in trust, and to otherwise act in respect thereof as if it were the owner. One-third of the net income was to be paid to each child as long as he or she should live, and, upon the death of any one of the principal beneficiaries, his or her one-third should be paid over and distributed in accordance with the directions in his or her will, and, in default of such directions, then to the surviving issue of the deceased beneficiary, and, in default of such issue, to the beneficiaries entitled to participate in the other two-thirds of the income. It was provided that during the first fifteen years of the trust, with the written consent of the primary beneficiaries, the net income might be accumulated by the trustee and added to the principal of the trust. The trust was terminable at any time, in whole or in part, by the three children of the grantor by an instrument in writing approved by the grantor, if living, and it would also terminate in any event upon the death of the survivor of the three children, the primary beneficiaries. Upon termination, equal distributions of one-third to each of the children, if living, or to their children, if deceased, were provided. It was also provided that the trust instrument might be altered, changed, [fol. 273] or modified in any manner and to any extent by the three children by instrument in writing filed with the trustee, subject only to the approval of the grantor, if living.

On September 21, 1918, the grantor and beneficiaries amended the trust agreement by providing that the trust estate should be divided into three separate and equal parts or shares, each designated by the respective names of his three children, and undivided interests in the estate assigned to each share. The net income from each share during the remainder of 1918, and one-half of the net income from each share after December 31, 1918, and during the life of the grantor, should be accumulated and added to the principal of such share, subject to the right of the beneficiary to receive upon his written request, approved by the grantor, the whole or any part of the one-half of the net income from his share of the estate directed to be accumu-

lated. In other respects the original deed of trust continued in force and effect.

On June 19, 1919, the deed of trust was amended a second time to provide that one-half of the net income of each share of the trust estate, or of each of the three trust estates should be paid over and distributed as received to the beneficiaries entitled thereto, and the remaining one-half of such net income should be paid in whole or in part to the beneficiaries entitled thereto when requested in writing by two of the original beneficiaries; any of the net income not paid over or distributed to be added to the principal of the trust fund from which derived. If any of the beneficiaries died, the net income from the trust estate to which such deceased beneficiary would have been entitled was to be payable to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary and to charities in accordance with the directions in such beneficiary's last will, and, in default of any such directions, then to the surviving issue of deceased beneficiary per stirpes, and, in default of such issue, to the surviving issue of the grantor per stirpes. Upon termination of the trusts, the several trust estates should be paid over to the beneficiaries respectively entitled thereto, the share or estate of any deceased beneficiary to be paid to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary, and to charities, as might be directed by will, and, in default of such direction, to the surviving issue of such beneficiary, and, in default of such issue, to the surviving issue of the grantor. But for this modification, the original trust remained as above.

On December 1, 1920, the deed of trust was amended a third time to provide that the trustee should pay out each year so much of the net income from each of the separate trusts to the beneficiaries entitled thereto as should be requested in writing by a majority of the beneficiaries, subject to the requirement that equal payments be made out of the net income from each of the separate trusts so that each trust should be maintained on a basis of equality in amount as far as practicable. Any part not so paid out in accordance with this provision was to be added to and form a part of the principal of the trust estate from which derived.

These amendments were executed by the original beneficiaries, approved by the grantor, and delivered to the trustee. A further amendment was made April 25, 1928, by the surviving original beneficiaries to authorize the trustee to borrow such sums of money as should be authorized and directed by John P. Wilson, Jr. Except for the foregoing amendments, the deed of trust was in force during the taxable years in question, 1924 to 1929, inclusive. Prior to the amendment of September 28, 1918, the trustee kept its accounts as a single trust for the three beneficiaries, but after that date the capital account of the trustee was divided into three equal parts, one assigned to each beneficiary. Separate accounts were thereafter kept. The corpus was always stocks and cash. There was never an actual division to each beneficiary, but a third interest in each item of property was assigned to the account of each beneficiary. No segregation of the stock certificates or money took place. Each beneficiary was assigned his third interest in each item of trust property. Income received was divided and carried in equal amounts to the account of each beneficiary. The certificates of stock were held by the respondent as trustee under the original deed of trust or in the name of the nominee of the trustee. After these several amendments or any of them, the certificates of stock were not surrendered to the various corporations and new certificates issued. Other than the maintenance of three separate accounts on the books, to which the interests of the original [fol. 274] beneficiaries were assigned after September, 1918, the estate was treated by the trustee as held in one trust. The trustee kept one bank account for all. Cash receipts were deposited and disbursements withdrawn from it for all. The original beneficiaries gave instructions in writing from time to time to the trustee respecting distribution of income from the trust property and the investment of trust funds. John P. Wilson, Jr., one of the original beneficiaries, always joined in such instructions. Sometimes the original beneficiaries would purchase securities and forward them to the trustee for addition to the trust estate in advance of income from the trust to pay therefor, and the trustee would reimburse the beneficiaries as the income was received.

The grantor died October 3, 1922; Martha Wilson died December 25, 1923.

The Commissioner refused separate returns for the years in question, holding that there was but one trust and that the income of all the property is taxable to one trust. If there are three trusts created, there are no deficiencies or overpayments; if one trust, there is a deficiency for each year.

The statute imposes a tax upon the income of estates or any kind of property held in trust, including income which in the discretion of the fiduciary is to be distributed to the beneficiaries or accumulated, the net income to be computed in the same manner and on the same basis as in the case of an individual, and the fiduciary is required to make an annual return for every estate or trust having an income of $1,500 or gross income of $5,000. Sections 219, 225 of the Revenue Acts of 1924 and 1926 (26 U. S. C. A. § 960 note 966 and note); sections 143, 161, 162 of the Revenue Act of 1928 (26 U. S. C. A. §§ 2143, 2161).

The Board of Tax Appeals found that it was the intent of the grantor to make three separate trusts. John P. Wilson, Jr., testified that the amendments were made for the purpose of dividing the several interests to facilitate administration in the event of death of any one of the beneficiaries and for the purpose of reducing taxes on accumulated income by assigning the same to three trusts rather than one.

We are satisfied that three separate trusts were not created. The intent of the parties who make agreements is important in aid of construction, but such intent is to be ascertained from the instrument or instruments as a whole, when read in a setting of all the circumstances, and what was actually done, rather than the purpose of the parties must control. United States v. Phellis, 257 U. S. 156, 172, 42 S. Ct. 63, 66 L. Ed. 180. By the trust deed, this grantor originally created one trust for his three children, each having an equal share. It was carried and treated by the trustee as a single trust. The same equal divisions are maintained by the amendments. The trustee assigned, after the first amendment, to each child an undivided one-third interest in the aggregate estate; all additions to the trust estate and income therefrom were similarly treated. No particular share of stock was set aside or assigned to the separate accounts of the respective beneficiaries, and no income from an identifiable stock was carried to a par-

icular beneficiary. Acquired property after the first amendment, as well as before, was maintained in the aggregate, and only undivided interests were assigned to the respective accounts set up for the beneficiary. The income derived from all the trust property and each and every item thereof was assigned to the respective accounts, one-third to each account. While this was an allocation to the respective accounts in equal shares, it was held by the trustee in one fund deposited in a single account. The stocks were held in the name of the trustee, as under the original grant, or in the name of a nominee, and none were held by the trustee in its name separately for different beneficiaries. In making reinvestments, the trustee did not separate the funds for reinvestment into three accounts and invest for each account. It maintained one fund and invested on behalf of all the beneficiaries together.

Thus there were no separate trust estates created or maintained, and the property was not administered as belonging to distinct identifiable estates, since in every substantial respect this trust property was at all times held and administered by the trustee as a single trust estate of the three children, and this was so after the amendments as well as before.

Under applicable rules of law, the claim of three trusts must fail. The amendments resulted only in setting up separate accounts for the beneficiaries which recorded their undivided one-third interests. The property itself continued to be held in the aggregate as a single trust fund, [fol. 275] and consequently there was but one trust estate, rather than three, during the taxable years in question. State Savings Loan & Trust Co. v. Com'r, 63 F. (2d) 482 (C. C. A. 7); Marble v. Marble's Estate, 304 Ill. 229, 235, 136 N. E. 589; Snyder v. Snyder, 280 Ill. 467, 469, 117 N. E. 465; Leach v. Godwin, 198 N. Y. 35, 91 N. E. 288; Johnson v. United States, 65 Ct. Cl. 285.

We are referred to Lynchburg Trust & Savings Bank v. Commr., 68 F. (2d) 356 (C. C. A. 4), and Willcuts v. Ordway, 19 F. (2d) 917 (C. C. A. 8). In each, by the terms of the instruments involved, there was ample to support the claim of separate trusts. In the instant case, the deed provided that it should be construed according to the laws of the state of Illinois and, in view of what was said in Snyder v. Snyder, supra, the amendments were ineffective to cre-

ate separate and independent trusts for each of the beneficiaries for lack of a definite and separate corpus.

Decision reversed.

[fol. 276] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 11th day of March, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

UNITED STATES TRUST COMPANY OF NEW YORK as Trustee, etc., Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is reversed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk.

[fols. 277-303] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Commissioner of Internal Revenue vs. United States Trust Company of New York. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 11, 1935. William Parkin, Clerk.

[fol. 304] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

against

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee Under Deed of Trust of John P. Wilson, Respondent

Before Manton, Augustus N. Hand and Chase, Circuit Judges

E. Sheldon Stewart, Esq., John P. Wilson, Esq., Clay Judson, Esqs., Attorneys for Respondent

Per CURIAM:

Petition for rehearing denied.

——— ———, ——— ———, Circuit Judges.

Filed Mar. 27, 1935.

[fol. 305] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 27th day of March, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

UNITED STATES TRUST COMPANY OF NEW YORK as Trustee, etc., Respondent

A petition for a rehearing having been filed herein by counsel for the respondent;

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 306] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Commissioner of Internal Revenue vs. United States Trust Company of New York. Order. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 27, 1935. William Parkin, Clerk.

[fol. 307] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 306, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Commissioner of Internal Revenue, Petitioner, against United States Trust Company of New York as Trustee, etc., Respondent, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 8th day of April, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 308] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,723. U. S. Circuit Court of Appeals, Second Circuit. Term No. 169. United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson, Petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed June 25, 1935. Term No. 169 O. T. 1935.

(7064-C)

FILE COPY

FILED
JUN 25 193
CHARLES ELMORE CRO
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

CLAY JUDSON,
Counsel for Petitioner,
120 W. Adams St.,
Chicago, Ill.

WILSON & MCILVAINE,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

SUBJECT INDEX.

	PAGE
Petition for Writ of Certiorari—	
Summary statement of the matter involved.....	1
Reasons relied upon for the allowance of the writ	3
Prayer for writ	6
Brief in support of petition for writ of certiorari....	7
I. Opinions of the Board of Tax Appeals and of the United States Circuit Court of Appeals of the Second Circuit	7
II. Jurisdiction	8
III. Statement of the Case.....	8
IV. Specification of errors.....	13
V. Summary of Argument	14
VI. Argument	14
Conclusion	23

Table of Cases Cited.

Bay Biscayne Co. v. Baile, 73 Fla. 1120, at 1150 (75 So. 860, at 869) 5
Burke v. Burke, 259 Ill. 262, at 268 (102 N. E. 293, at 295) 4, 20
In re Colgrove's Estate, 221 N. Y. 455 at 459 (117 N. E. 813 at 814) 5, 20
Cook v. Patrick, 135 Ill. 499, at 508 (26 N. E. 658) 20
Gregory v. Helvering, 293 U. S. 465, 469 15
Gurnett v. Mutual Life Ins. Co., 356 Ill. 612, at 617 (191 N. E. 250, at 252) 4, 20
Hoeper v. Tax Commission of Wisconsin, 284 U. S 206, at 215 15
Knowlton v. Moore, 178 U. S. 41, at 77 15
Marble v. Marble, 304 Ill. 229 (136 N. E. 589) 19
Rollestone v. National Bank of Commerce, 299 Mo. 57, at 71 (252 S. W. 394, at 398) 5, 23
Snyder v. Snyder, 280 Ill. 467 (117 N. E. 465) 4, 18, 19
Stevenson v. Lesley, 70 N. Y. 512, 516 21
United States v. Phellis, 257 U. S. 156, at 172 17
Vanderpoel v. Loew, 112 N. Y. 167 (19 N. E. 481) ... 5, 21

Board of Tax Appeals Case.

William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson, v. Commissioner of Internal Revenue, 29 B. T. A. 304 ..... 2, 3, 7, 24

Text Books Cited.

Am. Law Institute, Sec. 73, Tentative Draft No. 1—Restatement of Law of Trusts 5, 21
Bogert, Trusts and Trustees, (1935) Vol. 1, Sec. III, pp. 351 and 352 ..... 5, 21
Perry on Trusts, 7th Ed., Vol. 1, Sec. 67 ..... 4, 20

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. .....

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of United States Trust Company of New York, as Trustee under Deed of Trust of John P. Wilson, respectfully shows to this Honorable Court:

A. Summary Statement of the Matter Involved.

This case involves a proposed assessment of a deficiency in income taxes for the years 1924 to 1929, inclusive.

The taxpayer is United States Trust Company of New York, as Trustee under Deed of Trust of John P. Wilson, as amended. The taxpayer reported all income accumulated by it as having been accumulated in three separate trusts and paid the taxes on that basis. The Commissioner claimed that there was but one trust and assessed the alleged deficiency accordingly.

By the stipulation filed in the Board of Tax Appeals

the controversy is limited to a single issue, namely, is there one trust or are there three trusts? (R. 122.)

The original trust was created in March, 1913, by John P. Wilson for his three children. (R. 65, 133.) It was a single trust. Pursuant to the express power reserved in the original instrument to amend it in any respect (R. 76) it was four times amended, namely in 1918 (R. 79-81), in 1919 (R. 82-85), in 1920 (R. 86-89), and in 1928 (R. 133-136).

It is the position of the taxpayer that the amendments divided the original trust into three trusts, one for each of the three children of the grantor, and that the accumulations are properly divided between these three trusts and properly taxed to them. This is denied by the Commissioner.

The Board of Tax Appeals reversed the Commissioner, holding with the taxpayer that there were three trusts. The opinion of the Board is not published but is printed in the record. (R. 95-105.) The case, although independently considered by the Board, was decided on the authority of *William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,* v. *Commissioner of Internal Revenue,* 29 B. T. A. 304, (See R. 104-105) from which case it is indistinguishable. The latter case was appealed by the Commissioner to the United States Circuit Court of Appeals of the Seventh Circuit, where it is still pending.

The instant case was appealed by the Commissioner to the United States Circuit Court of Appeals of the Second Circuit. That Court reversed the Board of Tax Appeals. The Board had found the intention to create three trusts clearly expressed, and gave effect to that expressed intention. The Circuit Court of Appeals held that "* * * what was actually done, rather than the purpose of the parties must control" (75 Fed. (2d) 973 at 976). And what was

done was found to have made the intention to create three trusts inoperative solely because the Trustee, after the amendments, did not physically separate the corpus of the estate into three parts, but allowed the investment to remain *in solido* assigning undivided interests in the corpus to the accounts set up for the separate trusts. The Court decided that the amendments to the trust instrument were ineffective to create separate trusts because undivided interests in a single identifiable fund were held to be too indefinite to constitute the corpus of separate trusts.

B. Reasons Relied on for the Allowance of the Writ.

The amendments to the original instrument clearly set forth the unquestioned intention of the parties to create separate trusts. (See accompanying brief, P. 9-10, and R. 79-89, 133.)

It has been admitted throughout the proceedings that all of the amendments were validly adopted pursuant to the power reserved in the original instrument.

No authority has been cited, and we have found none, which would justify a decision against the taxpayer merely because the parties sought to accomplish their purpose by amendments to the original instrument rather than by a termination of the old trust and a distribution of the assets, followed by new agreements and new assignments. The Board of Tax Appeals, in the companion case of *McIlvaine, et al., Trustees under Deed of Trust of John P. Wilson* v. *Commissioner*, 29 B. T. A. 304, at page 311, definitely held that the creation of the separate trusts by amendments was proper. The Circuit Court of Appeals did not question the propriety of proceeding by amendment, but held that the purpose of the parties had not been fulfilled because the Trustee had made no physical division of the property between the several trusts.

An administrative practice of the Trustee cannot change the fundamental characteristics of these trusts. If the Trustee failed to carry out the directions contained in the amendments it could by proper proceedings have been forced to conform its administrative practice to those directions. The record here, however, shows that the Trustee did everything it was supposed to have done and did everything necessary to divide the old trust into three separate trusts. In the opinion of the Court, however, the assignment of undivided interests to each of the three trusts instead of the physical division of the funds between them, alone kept this a single trust and defeated the purpose of the parties to create three trusts.

The Court held that "the amendments were ineffective to create separate and independent trusts for each of the beneficiaries (R. 277-278)"—not because the intention was not clearly expressed in the amendments, but—"for lack of a definite and separate corpus." (R. 278.)

In so holding the Court went directly in the face of all authority and universal practice, which recognizes that an undivided interest may properly constitute the corpus of a trust estate. The Court relied particularly on the case of *Snyder* v. *Snyder,* 280 Ill. 467 (117 N. E. 465). That case does not support in the slightest degree the doctrine that undivided interests in a single fund are not definite enough to form the corpus of separate trusts. On the contrary the Illinois courts have held in the broadest language possible that *any* property interest whatever, whether legal or equitable, may be the trust *res.*

Burke v. *Burke,* 259 Ill. 262, at 268 (102 N. E. 293, at 295).

Gurnett v. *Mutual Life Ins. Co.,* 356 Ill. 612, at 617 (191 N. E. 250, at 252).

And this is the law generally.

Perry on Trusts, 7th Ed. Vol. 1, Sec. 67.

It is specifically the rule, without exception in any authority, that an undivided fractional interest in any property may constitute the corpus of a trust.

Section 73—Am. Law Institute—Tentative Draft No. 1—Restatement of Law of Trusts.

Bogert, Trusts and Trustees, (1935) Vol. 1, Sec. III, pp. 351 and 352.

In re Colgrove's Estate, 221 N. Y. 455 at 459 (117 N. E. 813 at 814).

Vanderpoel v. *Loew,* 112 N. Y. 167 at 180 (19 N. E. 481 at 484).

Bay Biscayne Co. v. *Baile,* 73 Fla. 1120, at 1150 (75 So. 860, at 869).

Rollestone v. *National Bank of Commerce,* 299 Mo. 57, at 71 (252 S. W. 394, at 398).

It has been stated by counsel for the Commissioner, and will doubtless be contended here, that the decision in the instant case rests entirely on the particular facts and involves no point of general public interest. This position is wholly untenable. The decision of the Circuit Court of Appeals is rendered, of course, on the facts presented, but it is based on a principle of wide public interest involving many trusts throughout the country and the application of the tax laws to them. The position of the Government has always been, (and the decision of the Circuit Court of Appeals is) that there was no effective division into three trusts, because there was no physical division of the trust *res* but merely an assignment to each trust of an undivided interest. This conclusion is based in turn on the erroneous doctrine laid down by the Court that the amendments were ineffective to create separate trusts because undivided interests are too indefinite to form the corpus of separate trusts. There is no other ground stated by the Court or which can be found to justify its decision. Such a decision is directly in conflict with

rules of law having general and specific application to the facts here involved. Furthermore, it is in conflict with the known practice of trustees throughout the country, to which the Supreme Court need not close its eyes. Precisely the same question passed on in the instant case is now pending before the Circuit Court of Appeals of the Seventh Circuit in the case already referred to. The question involved is one of great public and general interest. If the decision stands it will mean confusion in the administration of every trust in the land in which the corpus of the estate is an undivided interest in real or personal property.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 199, *Commissioner of Internal Revenue, petitioner,* v. *United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson, respondent,* and that the said judgment of the Circuit Court of Appeals of the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

UNITED STATES TRUST COMPANY OF NEW YORK,
Trustee under Deed of Trust of John P. Wilson,
By CLAY JUDSON,
Counsel for Petitioner.

WILSON & MCILVAINE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. .....

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS OF THE BOARD OF TAX APPEALS AND CIRCUIT COURT OF APPEALS OF THE SECOND CIRCUIT.

The opinion of the Board of Tax Appeals is not officially published but is printed in the record of this case. (R. 95-105.) [The case, although independently considered by the Board was decided on the authority of a companion case, *William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,* v. *Commissioner of Internal Revenue,* 29 B. T. A. 304. (See R. 104-105.) The latter case is now pending on appeal by the

Commissioner of Internal Revenue to the Circuit Court of Appeals of the Seventh Circuit.]

Opinion of Circuit Court of Appeals of Second Circuit 75 F. (2d) 973.

II.

JURISDICTION.

The jurisdiction of this Court to grant this petition for writ of certiorari is based upon Section 240 of the Judicial Code as amended (Title 28, U. S. C. A., Sec. 347), and paragraph 8 of the Act of February 13, 1925 (Title 28, U. S. C. A., Sec. 350). The judgment of the Circuit Court of Appeals of the Second Circuit, of which review is sought, was entered March 11, 1935. (R. 278.) Petition for rehearing duly filed by petitioner (respondent below) was denied on March 27, 1935. (R. 279.)

III.

STATEMENT OF THE CASE.

The facts are disclosed in the record, in the opinion of the Board of Tax Appeals (R. 95-105), and in the opinion of the Circuit Court of Appeals of the Second Circuit (75 F. (2d) 973).

The sole question before the Court is whether the Circuit Court of Appeals of the Second Circuit, in reversing the Board of Tax Appeals and in finding that the amendments to the trust deed of John P. Wilson failed to create three trusts, erroneously laid down a rule which is contrary to authority and to principles of law on which the practice of trustees and settlors throughout this country has been based.

On March 12, 1913, John P. Wilson established a trust

for his three children. (R. 65-77.) The trust deed provided that any of its provisions "may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries * * * provided, however, that such instrument must be approved in writing" by the grantor if living. (R. 76.) Pursuant to the authority reserved in the original instrument the provisions of the trust instrument were four times changed.

The first amendment was adopted under date of September 21, 1918. (R. 79-81.) It directed that the trust estate "be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated" by the respective names of the three beneficiaries. It was also provided by the first amendment that, during the life of the grantor, a part of the net income received from each share should "be accumulated and added to the principal of such share." This provision with reference to income, however, was superseded first by the provision relating thereto in the second amendment and finally by the provision relating to income contained in the third amendment.

The second amendment was adopted under date of June 19, 1919. (R. 82-85.) It provided that "one-half (½) of the net income of each of the three trust estates" should be paid over as received to the beneficiaries entitled to share therein, and the other half should be paid over in accordance with the requests made to the Trustee. It was further provided that the "net income from each of said trusts not paid over" should be "added to the principal of the trust fund from which" it was derived; and that "the several trust estates held in trust" should upon termination of the trusts be paid over to the respective beneficiaries.

The third amendment was adopted under date of December 1, 1920. (R. 86-89.) It superseded the portions of the prior amendments relating to the payment of income. It directed the Trustee to "pay out as much of the income from each of said separate trusts" as it was directed to pay by a majority of the beneficiaries "of all said trusts," with the proviso that "equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality," so far as practicable. This amendment further provided that "so much of the net income received in any year from each separate trust estate" as was not paid out was to be added to the principal "of the separate trust estate from which it was derived"; and so much of the net income "of said trusts" as the Trustee was directed to pay out for charitable uses was to be paid out in equal amounts "from each of said separate trusts."

The fourth amendment was adopted under date of April 25, 1928. (R. 132, and 133-136.) It enlarged the powers of the Trustee with respect to borrowing money, providing in part as follows (R. 135):

> "All sums at any time borrowed in pursuance of this authority shall be and be dealt with as part of the principal of the three trusts hereunder in equal shares in the same manner and to the same extent as any other cash constituting part of the principal of said trust estates."

Prior to the amendment of September 21, 1918, the Trustee kept one account under the heading "Trust under Deed of John P. Wilson for John P. Wilson, Jr., and others." All of the income as collected was credited to this account. (R. 144.) Aside from cash, the property at all times consisted chiefly of corporate stocks with a few government and municipal bonds. (R. 138.) Immediately after the amendment of September 21, 1918,

there was a change in the method of keeping the accounts. At that time three accounts were opened, one in the name of "Trust under Deed of John P. Wilson for John P. Wilson, Jr.", one in the name of "Trust under Deed of John P. Wilson for Anna W. Dickinson," and one in the name of "Trust under Deed of John P. Wilson for Martha Wilson," and thereafter each of the separate accounts was credited with its income only. At the same time on the records of the Trustee an actual division was made of its property account into three separate accounts of property held showing the exact number of shares and bonds in each trust. (R. 145.) The Trustee filed separate income tax returns in each year for each of the three trusts and paid all taxes shown to be due upon the accumulations of income in each trust separately. (R. 141-144; Exhibits 4-39, 164-226.) Exhibits 40 and 41 (R. 227-229) are photostatic copies of the pages of the old account as it was kept prior to the amendment of September 21, 1918. These exhibits show that prior to that time the account was treated as a single unit but that on September 27, 1918, the balance of principal and income was divided into three parts on the books, and one part was assigned to each of the three separate trusts then set up, namely the trust for John P. Wilson, Jr., the trust for Martha Wilson, and the trust for Anna W. Dickinson. Exhibits 42, 43, and 44 (R. 147-149; 230-236) are photostatic copies of ledger pages from the books of the Trustee and show the three new accounts opened after the first amendment to the trust indenture. These show that an undivided one-third interest in each of the items shown on the earlier single account was assigned to each one of the new trust accounts. All transactions were thereafter separately accounted for in each of the three separate trusts. (R. 151.)

Although there was no physical separation of the stock certificates the interest represented by them was appor-

tioned on the vault records of the Trustee between the three trusts. (R. 159-161.)

When dividends were received they were credited in equal amounts to the three trusts. (R. 161.) Whenever the stock was held in the name of a nominee it might be applicable not merely to the Wilson trusts but to other trusts held by the Trustee as well. (R. 161.)

All of the cash held by the Trust Company for all of its trust estates (including the three Wilson trusts) was kept in one bank deposit. In this respect the Wilson trusts were treated exactly as all the other trusts managed by the United States Trust Company. (R. 164.)

A statement of the foregoing facts is also found in the opinion of the Board of Tax Appeals (R. 95-104), and in substance is also found in the opinion of the Circuit Court of Appeals of the Second Circuit. (75 Fed. (2d) 973.) The Court found:

> "* * * Prior to the amendment of September 28, [21] 1918, the trustee kept its accounts as a single trust for the three beneficiaries, but after that date the capital account of the trustee was divided into three equal parts, one assigned to each beneficiary. Separate accounts were thereafter kept. * * * There was never an actual division to each beneficiary, but a third interest in each item of property was assigned to the account of each beneficiary (p. 975).
>
> "* * * The trustee assigned, after the first amendment, to each child an undivided one-third interest in the aggregate estate; * * *." (p. 976.)

The foregoing statement by the Circuit Court of Appeals is substantially correct, except in so far as it refers to an assignment of undivided interests to "each beneficiary" or to "each child". The record cited above is perfectly plain that the assignment after the first amendment was of a one-third interest to each of the separate accounts of the three trusts set up for the three beneficiaries on the books of the Trustee.

The Court further found, page 976:

"• • • Acquired property after the first amendment, as well as before, was maintained in the aggregate, and only undivided interests were assigned to the respective accounts set up for the beneficiary. The income derived from all the trust property and each and every item thereof was assigned to the respective accounts, one-third to each account. While this was an allocation to the respective accounts in equal shares, it was held by the trustee in one fund deposited in a single account. The stocks were held in the name of the trustee, as under the original grant, or in the name of a nominee, and none were held by the trustee in its name separately for different beneficiaries. In making reinvestments, the trustee did not separate the funds for reinvestment into three accounts and invest for each account. It maintained one fund and invested on behalf of all the beneficiaries together."

• • • • •

IV.

SPECIFICATION OF ERRORS.

1.—The Circuit Court of Appeals erred in reversing the decision of the United States Board of Tax Appeals.

2.—The Circuit Court of Appeals erred in holding that the amendments to the original trust indenture do not create three trusts.

3.—The Circuit Court of Appeals erred in holding that the amendments "were ineffective to create separate and independent trusts for each of the beneficiaries • • • for lack of a definite and separate corpus"

4.—The Circuit Court of Appeals erred in holding that under the laws of the State of Illinois (or of any other state) the amendments were ineffective to create separate trusts for lack of a definite and separate corpus.

5.—The Circuit Court of Appeals erred in taking from

the taxpayer a substantive property right existing under the laws of the State of Illinois.

6.—The Circuit Court of Appeals erred in holding that an undivided interest in property is too indefinite to constitute the corpus of a separate trust estate.

V.

SUMMARY OF ARGUMENT.

The language in the amendments to the trust instrument indicates as plainly as language can an intention to create three trusts. The opinion of the Circuit Court of Appeals is directly opposed to the lawful and proper purpose of the parties and is based solely on the doctrine, finding no support in any authority, that a trust must fail for lack of a definite corpus if the interest held in trust is an undivided interest in a larger fund. No authority has been found in any jurisdiction to justify this decision. It is not the law in Illinois, and an opinion which so holds not only unjustly penalizes the taxpayer in this case in a very large amount, but causes confusion and uncertainty among trustees, settlors and beneficiaries throughout the country.

VI.

ARGUMENT.

THE AMENDMENTS TO THE TRUST INDENTURE CLEARLY EXPRESS THE INTENTION OF ALL THE PARTIES TO CREATE THREE SEPARATE TRUSTS. THE DECISION OF THE CIRCUIT COURT OF APPEALS THAT THREE SEPARATE TRUSTS WERE NOT CREATED IS CONTRARY TO ALL AUTHORITY AND TO UNIVERSAL PRACTICE.

The validity of the amendments to this trust indenture as such has never been questioned. They were adopted in the manner and form required by the provisions of the

original trust indenture permitting the change or modification of that instrument in any respect whatsoever. The clearly expressed purpose of the amendments becomes even more manifest when they are read as a whole than is apparent from the reading of the excerpts contained in the statement of facts. The original grantor and the beneficiaries, who together were entitled to modify the original instrument, intended to modify that instrument so that after September 21, 1918, the Trustee should hold three trusts, one for each of the beneficiaries, and not one trust in which each had an interest. If there are three trusts the accumulations in each trust must be separately taxed at the rates applicable to each. If there is one trust the accumulations therein are taxed at a much higher rate. The parties cannot be criticized for dividing this single trust into three trusts though their main purpose may have been to save taxes. There is no rule which requires that of two ways equally available for accomplishing a given end, that one must be chosen which will be subject to the greater tax. On the contrary, as has been repeatedly reiterated by this Court

> "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them, by means which the law permits, cannot be doubted." *Gregory* v. *Helvering*, 293 U. S. 465, 469.

Nor is there any color of justification for requiring the Trustee of a fund held for one of these beneficiaries to pay a tax at a rate measured not by the income from that fund but by the income from that fund and two other funds combined. In effect that would be to tax one person on the income of another. See *Hoeper* v. *Tax Commission of Wisconsin*, 284 U. S. 206 at 215, and *Knowlton* v. *Moore*, 178 U. S. 41 at 77.

If three trusts were created for the three children of the settlor in this case whatever advantages flow from that

fact are legitimate and proper. The fact that there are advantages can have no bearing whatever on the real question at issue, which is, were three trusts created?

Nor can it be that a mere matter of form in the establishment of the separate trusts, namely, their creation by *amendment* of the original instrument rather than by a new trust deed following a termination of the original trust, can possibly be held to affect the decision in this case.

This leaves but one matter for consideration, which is the ground on which the Circuit Court of Appeals based its decision, namely, the failure of the Trustee to physically divide the aggregate fund, and to assign specific shares of stock and specific dollars to each of the trusts. The only reason advanced by the Circuit Court of Appeals for its decision is that the purpose of the parties to create separate and independent trusts was ineffective because an undivided interest in a definite aggregate fund is too indefinite to form the corpus of a separate trust.

The language of the instruments state that these trusts were separate and distinct and the parties so treated them. If the Trustee had failed to carry out the directions contained in the instruments that failure could not have affected the legal relationships therein set forth. But the Trustee did not fail in this respect. It treated the trusts, as separate and distinct trusts, each with its own records and accounts. (R. 145.) It filed separate tax returns for each trust. (R. 141-142.) It treated the funds held in these three trusts exactly as it treated the funds held by it in the thousands of other trusts in which it acted as trustee. (R. 164.)

The Circuit Court of Appeals, however, took the position that what was done, namely, the assignment of undivided interests to the separate trusts rather than the physical division of the property between them, indicated some

other intention, and the court cited as authority the case of *United States* v. *Phellis*, 257 U. S. 156, at 172. In that case the Supreme Court said that what is actually done rather thar the purpose of the parties must control, although the court found that there was no difference in fact between the intention of the parties and what they actually did. Moreover, the question before the court was the validity of a tax assessed under the 1913 Revenue Act against an individual based on the receipt of 500 shares of stock of a Delaware corporation distributed to the taxpayer by a New Jersey corporation. The former corporation arose out of a reorganization of the latter, and the taxpayer argued that the two corporations were essentially identical and that the receipt of the stock in question therefore did not constitute realized income in his hands. As to the particular point involved the court said that in such matters what was done rather than the design and purpose of the participants should be the test, and the court found that the two corporations were not essentially identical. Whether two corporations organized under the laws of different states are essentially identically must depend upon what was actually accomplished rather than upon the intention of the parties. In such a case the intention of the participants may well be immaterial. In determining the character of a trust, however, the major factor involved is the intention of the parties as indicated by the language used in the instrument creating the trust. Those who drew the instruments in the instant case clearly expressed their intention. The trustee by no act of its own could change the character of the trust. Nor is there any single thing which was *done* in the instant case at variance with the plain intention of the parties expressed in the amendments.

The original trust instrument provided that it should be construed according to the laws of the State of Illinois. (R. 77.) And presumably each of the modifications thereafter

adopted is controlled by that provision. The Circuit Court of Appeals so held. At the conclusion of its opinion, in setting forth the basis of its decision the Court said, page 976:

> "* * * In the instant case, the deed provided that it should be construed according to the laws of the State of Illinois and, in view of what was said in *Snyder* v. *Snyder, supra* (280 Ill. 467, 469; 117 N. E. 465) the amendments were ineffective to create separate and independent trusts for each of the beneficiaries for lack of a definite and separate corpus."

The decision cited does not sustain the opinion of the Court in the slightest degree, either directly or inferentially. There is nothing in that opinion which can possibly be urged as authority for the doctrine that undivided interests in a single fund are too indefinite to form the corpus of separate trusts. In that case a bill was filed to establish an equitable interest in land under an alleged trust based on a statement in a guardian's report as follows, page 468:

> " 'She would further report that the above amount shown to be in her hands belongs in equal parts to each of the five heirs, and that at their request it has been by her invested in land, as in that way it goes farther toward making a living for them.' "

The Court stated, page 470, that by this declaration the guardian

> "used words sufficient to raise a trust and she designated certainly the objects of the trust. There is, however, no definite subject. She states, generally, that the money of her wards was at their request invested in land. The land is not described particularly by technical terms or in any general manner that would serve to locate it. The subject of the trust not being described or in any way identified, it follows that an express trust was not created."

The Court held, however, that the facts alleged were sufficient to raise a resulting trust. The difference between

the instant case and *Snyder* v. *Snyder* (280 Ill. 467; 117 N. E. 465) is manifest. Here we have assignments to separate trusts of undivided interests in an identified fund. In *Snyder* v. *Snyder* the real estate which formed the whole subject of the single trust there under consideration was so inadequately described that it could not be identified by a reading of the documents. Nevertheless the Court there held that there was a *resulting* trust. That is the only authority cited directly in this connection in the opinion.

The only other Illinois case mentioned in the opinion is *Marble* v. *Marble,* 304 Ill. 229 (136 N. E. 589). That case contains a general statement that to create a trust the declaration must make reasonably certain its material terms, which must include the subject matter or property concerned, the beneficiaries, nature and quantity of interest they are to have, and the manner in which the trust is to be performed. The Court finds that the trust instrument was entirely lacking in a description of the subject matter of the trust. The opinion on this point states, pages 235-236:

> "* * * The only words which can be taken to be descriptive of the subject matter of the trust are the words 'the family estate,' into which the claim of appellant is stated to be entered at full value. There is no evidence of what the family estate consisted or that there was any family estate. There is no evidence of what property Mattie M. Marble was possessed at the date of the instrument. * * * Whatever she had, so far as the evidence shows, was her own property, acquired and paid for by her own means, not subject to any trust, not a part of any family estate, and the instrument does not purport to devote her property, or any particular part of it, to a trust in favor of her brother and his wife or 'the family' or any other beneficiary. If any estate was held in trust by her in her lifetime and managed by her as trustee the evidence does not show it.
>
> The words 'family estate,' without a context, are without meaning. * * *"

Obviously such a decision is no authority whatever for the particular proposition relied upon in the instant case.

Although there is no decision in the State of Illinois specifically passing on the precise point at issue, the Supreme Court of that State has recognized that there may be a resulting trust in a *part interest* in land. *Cook* v. *Patrick*, 135 Ill. 499, at 508 (26 N. E. 658). The Court has also repeatedly recognized the general rule that *any* right or interest may form the corpus of a trust estate. In *Burke* v. *Burke*, 259 Ill. 262 (102 N. E. 293) the Court said, page 268:

> "• • • In general, any right, interest or thing which may be the subject of property may be granted in trust. Every kind of vested right which the law recognizes as valuable may be transferred in trust. • • •"

In *Gurnett* v. *Mutual Life Ins. Co.*, 356 Ill. 612 (191 N. E. 250) the Court said, page 617:

> "A trust is an obligation arising out of a confidence reposed in a person, for the benefit of another, to apply property faithfully and according to such confidence. • • • It may be created in any property, real or personal, legal or equitable, which is in existence, and which in the eye of a court of equity, is of value. • • • Choses in action, contingent interests and expectancies may be assigned and a valid trust created in them. • • •"

See also Perry on Trusts, 7th Ed. Vol. I, Sec. 67, for a statement of the general rule.

The following New York decisions likewise state the law:

> "The fact that the trusts were to be kept in one fund does not necessarily create one trust." *In re Colgrove's Estate*, 221 N. Y. 455, at 459 (117 N. E. 813, 814).
>
> "Under the will the trustees took the legal title to the residuary estate, upon separate and several trusts, in favor of each of the nine grandchildren • • •. The trusts are not, it is true, separately framed, but the interests of the beneficiaries being given in shares,

the separable and distinct character of the trust provision necessarily results." *Stevenson* v. *Lesley*, 70 N. Y. 512, 516.

"The pivotal question in this case is • • • whether the testator meant to create one trust, • • • or whether he intended to constitute five separate trusts • • •.

"• • • The fund was to be kept together without actual division • • •.

"• • • An undivided fourth was to be set apart for each grandchild • • •.

"In many cases where, as in this, income and principal were given in equal shares, although out of one fund kept *in solido* for convenience of investment, a severance of the trust into its component parts has been adjudged. *Savage* v. *Burnham*, 17 N. Y. 561; *Stevenson* v. *Lesley*, 70 N. Y. 512; *In re Verplanck*, 91 N. Y. 443. The shares and interests are several, although the fund remains undivided." *Vanderpoel* v. *Loew*, 112 N. Y. 167, 177, 179, 180, 19 N. E. 481, 482, 483, 484.

Section 73 of Tentative Draft No. 1 of the Restatement of the Law of Trusts made by the American Law Institute, under the heading "Indefinite Interest in Definite Subject Matter," has the following comment (p. 136):

"a. An interest in a thing may be held in trust although it is not the complete property in the thing. It may be an estate for life or years, an undivided fractional interest or an interest up to or an interest above a certain stated amount."

Two of the illustrations given by the American Law Institute under this comment are as follows (P. 137):

"A and B are tenants in common of Blackacre. A declares himself trustee of his interest for C. A trust is created.

A, the owner of a claim for $1000, for value makes a partial assignment of the claim to the amount of $600 to B. B may effectively declare himself trustee of his interest. A may effectively declare himself trustee of his interest."

In Bogert, Trusts and Trustees (1935), Vol. 1, Section

111, pages 351, 352, after stating the general rule that a trust may fail for vagueness or indefiniteness, the author says:

> "There is no indefiniteness when the *res* is a certain share in a particular thing or in a group of things. Thus, an undivided interest in a vessel may be the subject of a trust, (*Starbuck* v. *Farmers' Loan & Trust Co.*, 51 N. Y. S. 58, 28 App. Div. 272) as well as a fractional interest in a lot of securities. (*Bay Biscayne Co.* v. *Baile*, 75 So. 860, 73 Fla. 1120.) If the settlor purports to make the subject of his trust an interest in certain specific things of a fungible nature, where each unit is like each other unit, but makes no separation of any particular things, and he owns a mass of things of that type, it is reasonable to give effect to his intent by treating a share in the mass as the trust *res. For example, if the owner of twenty thousand identical shares of stock in the same corporation purports to declare himself trustee of ten thousand shares of this stock for another, but fails to separate out any particular shares as the things to which the trust should attach, the intent of the settlor may be construed to be to make himself a trustee of a half interest in the entire group of shares.* (*Rollestone* v. *Nat. Bank of Commerce in St. Louis*, 252 S. W. 394, 299 Mo. 57.) A similar rule is applied in the case of the sale of fungible goods. (*Kimberly* v. *Patchin*, 19 N. Y. 330, 75 Am. Dec. 334.)" (Italics ours.)

The assets of the trust estates in the instant case were mainly corporate stocks with some cash and Government or Municipal bonds. (R. 138.) The Government's position, and the basis of the decision of the Circuit Court of Appeals, is that separate trusts were not created because there was no physical separation of the certificates of stock and cash as between the several trusts. What possible logic is there in this argument? A certificate of stock is itself merely evidence of an undivided interest in a corporation. The certificates of stock, except as evidence of such an interest, have no value in and of themselves. Each share of capital stock in a given corporation is precisely like

every other share, and whether the interests of a trustee and of the beneficiaries of a trust are represented by a stock certificate or by any other records showing the undivided interests of the trustee in the corporation are, we submit, without any fundamental significance. This very question was raised in the case of *Rollestone* v. *National Bank of Commerce,* 299 Mo. 57 (252 S. W. 394). The Court said, page 71:

> "It is next contended that, as the evidence does not show that any particular portion of the stock was set apart for Rollestone and a certificate issued therefor, the alleged trust must fail for lack of a definitely ascertained subject. But it clearly appears from Milliken's statements that he was carrying Rollestone for 10,000 shares of the capital stock of the Golden Cycle Mining Company. Now Milliken at that time had more than 1,000,000 shares standing in his name on the corporation's books, all of which were exactly alike in kind and value. There was no earmark by which any one of them could be distinguished from the others, so as to give it additional value or importance. They were like grain of a uniform quality, wherein one bushel is of the same kind and value as another. *Caswell* v. *Putnam,* 120 N. Y. 153, 157, 24 N. E. 287. The words '10,000 shares of capital stock' embodied, therefore, an accurate description of definite property rights in the corporation. A certificate of the same number of shares would have evidenced nothing more. *Richardson* v. *Shaw,* 209 U. S. 365, 28 Sup. Ct. 512, 52 L. Ed. 835, 14 Ann. Case. 981. Appellants' contention under this head is disallowed."

Conclusion.

In this case the Circuit Court of Appeals of the Second Circuit has rendered a decision on an important question of local and general law in conflict not only with the principle laid down in the decisions of the State of Illinois but also in conflict with authority generally. The decision is untenable as a matter of logic and is contrary to rules of

law on which the practice among trustees throughout the country is based.

It cannot be said that only the facts in this case are involved. If the Court is wrong in holding that an undivided interest in property is too indefinite to constitute the corpus of a separate trust, then there is nothing in the facts to justify the decision. The decision therefore is based on a principle, specifically laid down by the Court, which is of general and widespread application, and which is indefensible from the standpoint of authority or of logic.

Commissioner of Internal Revenue v. *William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson* (29 B. T. A. 304), involving precisely the same principle, is now pending before the Circuit Court of Appeals of the Seventh Circuit.

It is therefore respectfully submitted that the instant case is one calling for the exercise by this Court of its supervisory powers in order that the fundamental error in the decision of the Circuit Court of Appeals of the Second Circuit may be corrected and the confusion avoided which would result were the decision allowed to stand. To this end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals of the Second Circuit and finally reverse it.

CLAY JUDSON,
Counsel for Petitioner.

WILSON & MCILVAINE,
Of Counsel.

FILE COPY

FILED
AUG 8 193

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT HERETOFORE FILED.

CLAY JUDSON,
Counsel for Petitioner,
120 West Adams Street,
Chicago, Illinois.

WILSON & MCILVAINE,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 169.

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT HERETOFORE FILED.

In the original brief heretofore filed herein we called attention to the fact that the case of *Commissioner of Internal Revenue* v. *William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,* 29 B. T. A. 304, involving precisely the same principle as the instant case, was then pending on petition for review before the Circuit Court of Appeals for the Seventh Circuit.

By a unanimous decision of the Circuit Court of Appeals for the Seventh Circuit rendered on July 19, 1935, (*Commissioner of Internal Revenue, Petitioner,* v. *William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,* C. C. A. 7th Circuit, No. 5327)

the decision of the Board of Tax Appeals was affirmed. This case has not been officially reported, but may be found in paragraph 9511, Commerce Clearing House 1935 Federal Tax Service, Vol. 3-A, page 10,274. Upon substantially identical facts the Circuit Court of Appeals for the Seventh Circuit reached exactly the opposite conclusion from that of the Circuit Court of Appeals for the Second Circuit in the instant case.

In the course of its opinion the Circuit Court of Appeals for the Seventh Circuit said:

> "Our strong inclination to sustain the reasoning and conclusions herein of the Board of Tax Appeals, as reported in 29 B. T. A. 304, is much tempered by the fact that the Circuit Court of Appeals of the Second Circuit, in *Commissioner* v. *United States Trust Company of New York, Trustee Under Deed of John P. Wilson,* 75 F. (2d) 973, has decided otherwise. This case involved another trust of the same donor with the same beneficiaries as here, originally created about the same date as the one here and subsequently amended at about the same time and in very much the same manner, with some slight but concededly immaterial differences.
>
> * * *
>
> * * * "It would serve no useful purpose to enter upon further discussion of the propositions there and here considered. Suffice it to say that while we regret to differ from that distinguished court, we are satisfied that the Board properly reasoned and ruled that here three trusts were created, and the income from each was taxable accordingly and not as a single trust; and that the Board was right in determining there was no deficiency."

Since this opinion is not yet available in the reports, a complete copy thereof is, for the convenience of the Court, printed as an appendix to this supplemental brief.

The decision just referred to is directly in conflict with the decision of the Circuit Court of Appeals for the Second Circuit, to which the writ of certiorari relates. Both deci-

sions involve principles of law of wide-spread application. It is therefore respectfully submitted that not only for the reasons set forth in the petition for writ of certiorari and in the original brief in support thereof, but also in order that this conflict may be finally resolved and confusion avoided hereafter, this Court should grant the writ of certiorari and review the decision to which it relates.

Respectfully submitted,

CLAY JUDSON,
Counsel for Petitioner.

WILSON & MCILVAINE,
Of Counsel.

APPENDIX.

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 5327. OCTOBER TERM, 1934; APRIL SESSION, 1935.

Commissioner of Internal Revenue,
Petitioner,
vs.
William B. McIlvaine and John P. Wilson, Jr., Trustees Under Deed of Trust of John P. Wilson,
Respondents.

Petition for Review of Decisions of the United States Board of Tax Appeals.

July 19, 1935.

Before EVANS, SPARKS, and ALSCHULER, *Circuit Judges.*

ALSCHULER, *Circuit Judge.* Petitioner seeks review of decision of the United States Board of Tax Appeals denying petitioner's contention that the taxable estate comprises three trusts instead of a single trust. As a single trust the income tax rate for the years in question would have been carried into the higher brackets sufficiently to make the taxes in controversy larger by about $30,000 than if taxed as three trusts; and it is for this difference that the Commissioner assessed deficiencies for the respective years. The Board found there were three trusts, and no deficiencies.

March 19, 1913, John P. Wilson conveyed to his son, John P. Jr., and William B. McIlvaine, in trust, certain securities for the benefit of his three children, John, Martha, and

Anna. The trustees were authorized to receive the entire income, and to sell the securities and reinvest the proceeds in accordance with the written directions of any two of the beneficiaries; and to accumulate the net income for fifteen years unless the period be shortened by the beneficiaries with the approval of the grantor if living; and after that time to distribute all net income in equal shares to the beneficiaries as provided. Provision was made that the instrument might be altered, changed or modified to any extent by the three children with the approval of the grantor if living.

June 19, 1919, an amendment was made to the trust instrument providing that the trust property should be divided into three separate and equal trusts, each part to be separately held in trust by the trustees severally for one of the donor's said three children, and that the trustees should assign an undivided one-third interest in all the property they then held in trust for each of the children; and that all additions to the trust estate should be divided equally between the separate trust estates unless it be otherwise directed in the instrument of gift; and that the net income of the three trust estates should be paid to the beneficiaries entitled thereto upon the request of any two of the original beneficiaries, the income which was not paid out to be added to the principal of the trust fund from which it was derived.

December 1, 1920, a second amendment was made which canceled certain parts of the amendment of June 19, 1919, and substituted for it provisions which are the same as paragraphs 1 and 2 of Article III of the third amendment which was duly made December 6, 1920. Article III of the third amendment is set forth in the margin.*

---

* "(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.

"A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investment.

"Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall

It may be assumed that the trust instrument as originally drawn created a single trust. Concededly the trust, by its terms and with the consent of the beneficiaries and of the donor, if living, might be altered and amended in any of its provisions, so that there might be constituted any number of trusts; and it is unquestioned that the motive for setting up a larger number of trusts is not here material. So even though the sole purpose of the changes which were made was to bring about a reduction in the federal tax upon the income from the trust property, this would not transgress any right of the Government. The sole question is whether, under the amendments made, there were three trusts.

That it was the definite intent of the donor by these

---

be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

"Any property belonging to said trust estate may be taken and held for convenience in the name of a nominee of the said Trustees, or in the name of either of said Trustees, or in the name of said Trustees as joint tenants, without the addition of the word "Trustee" or "Trustees," or words indicating that such property is held in trust.

"(2) The said Trustees shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

"So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.

"Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

"(3) From and after the death of any one of the original beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, *per stirpes;* and in default of such issue then to the issue surviving from time to time of the said party of the first part, *per stirpes.*"

amendments to set up three separate trusts is too plain for controversy. In the amendments he repeatedly so states; and unquestionably the beneficiaries, in consenting to the amendments, did so with the intent and under the assumption that, whatever may have been the previous status, thereafter there were to be three separate trusts. While the intent of the parties is a prime factor in construing such an instrument, and in case of doubt this is accorded high evidentiary value, yet the instrument itself, where it is sufficiently plain, must determine its character and scope. *Colton* v. *Colton*, 127 U. S. 300; *State Savings Loan & Trust Co.* v. *Commissioner*, 63 F. (2d) 482 (C. C. A. 7); *Hubbell* v. *Burnet*, 46 F. (2d) 446 (C. C. A. 8).

True, there was here no provision for physical division of the trust property by segregating each portion of it. Under the terms of the amended instrument the corpus of each of the three trusts consisted of an undivided one-third interest. The physical property remained undivided in the possession of the trustees, who were the same for each of the three trusts. We perceive no valid reason why this may not be so, and it is well settled by authority that an undivided interest in real or personal property may properly be the subject matter of a trust. *Vanderpoel* v. *Loew*, 112 N. Y. 167; *Starbuck* v. *Farmers' Loan & Trust Co.*, 51 N. Y. S. 58, 28 App. Div. 272; *Gurnett* v. *Mutual Life Ins. Co.*, 356 Ill. 612; Bogert *Trusts and Trustees*, Vol. 1, pp. 351 and 352; Tentative Draft No. 1 of the *Restatement of the Law of Trusts*, Sec. 73.

It is well settled that separate and several trusts may be created by the same instrument, and be administered by the same trustees. *DeVer H. Warner, Trustee* v. *Commissioner*, 7 B. T. A. 1292 (affirmed 26 F. (2d) 1023); *Lynchburg Trust & Savings Bank* v. *Commissioner*, 68 F. (2d) 356; *Carruth* v. *Carruth*, 148 Mass. 431; *Claflin* v. *Dewey*, 177 Mass. 166.

Just what mode may or should be adopted for possessing and conserving the physical property which is thus subject to the separate trusts in undivided interests is not here of necessary significance. In this case, however, the trustees upon adoption of the amendments assumed to set up separate individual trust accounts for each of the three beneficiaries of the supposed separate trusts, and charged unto themselves as trustees severally for the separate beneficiaries an undivided one-third of the property and funds

granted by the donor, and kept the accounts accordingly. What more they could have done to carry out the donor's intent that there should be three separate and distinct trusts is not readily manifest—unless, indeed, they made physical division of the property, which was not essential to the separate trust estates.

In our judgment it was, after the amendments, as if in the very first instance the donor had, by separate instruments, conveyed to trustees, whoever they might have been —the same or different persons—an undivided one-third of the property in trust for the several separate beneficiaries. In such case we do not conceive that it would have made any difference that the three trusts thus created were in all respects equal in value and in treatment, and subject to idential conditions and stipulations, and were to be so kept, as was here the case.

If the conditions and terms of the several trusts so created had differed radically from one another, and there had been different trustees, there would have been no question but that the trusts were separate and several. But is this different if the terms of each of the trusts which the donor thus undertook to create are identical and the trustees the same? This of itself would not amalgamate into one trust that which would otherwise be three.

But we are concerned with income rather than with the physical possession of the property which produces it. While the property subject to the three trusts actually remained in the physical custody of the same persons who became the trustees for each of the three trusts, this was only for the purpose of holding, investing and conserving it, and for receiving and distributing the income therefrom to the three trusts which the amended instrument created. In this sense these persons, call them trustees, agents, custodians, or what not, in holding and collecting the income of the undivided property, and receiving the income therefrom, were merely the conduit through which the income, as it was received, was immediately passed to the three trusts.

In so receiving the income these persons became at once equitably the trustees for its transmittal to the three trusts. In such relation the receipt of the entire income will be deemed in equity the receipt of it for its instantaneous passing to and for the three undivided trusts estates. *Barnes* v. *Alexander*, 232 U. S. 117; *Burckhardt* v. *Northwestern*

National Bank, 38 F. (2d) 568. This is particularly true here, where these same persons were acting in the two capacities, *i. e.*, of holding and conserving the property and collecting the income therefrom, and of taking unto themselves as the trustees of the three separate trusts, as that income is received, the three undivided thirds of it for and on behalf of each of the three distinct trusts set up under the amended trust instrument.

As above indicated the practice was to hold the trust property undivided, and we have treated the matter as though this were required by the trust agreement, reaching the conclusion that even if so required there were three trusts instead of but one. But Article III of the third amendment specifies:

> "The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.
>
> "A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments."

It does not appear that those in custody of the property literally followed the direction by physically dividing the trust property in the manner specified. Instead of segregating the property as directed and making similar investments for the three trusts estates, or joint investments, they followed the practice above indicated of permitting the trust property to remain unsegregated. In all probability literal compliance with the letter of the trust instrument could have been required; but as the financial result to the beneficiaries seems to have been the same, and no question of malfeasance or nonfeasance appears to have arisen, and since the question here concerns not custody or administration of the trust property, but involves only the income which, as it was received, passed at once to these persons in their capacities as separate trustees of the separate trust

estates, we refer to this trust provision mainly as indicating definitely the purpose of the parties that there be three separate trusts, a purpose which to all intents, so far as concerns income and the tax thereon, appears to have been fully effectuated.

Our strong inclination to sustain the reasoning and conclusions herein of the Board of Tax Appeals, as reported in 29 B. T. A. 304, is much tempered by the fact that the Circuit Court of Appeals of the Second Circuit, in *Commissioner* v. *United States Trust Company of New York, Trustee under Deed of John P. Wilson,* 75 F. (2d) 973, has decided otherwise. This case involved another trust of the same donor with the same beneficiaries as here, originally created about the same date as the one here and subsequently amended at about the same time and in very much the same manner, with some slight but concededly immaterial differences. To the New York trustee the donor conveyed personal property, and subsequent amendments to the trust were made for the declared purpose of creating three separate trusts wherein the three originally named were the several beneficiaries.

After the amendments the same questions arose as to whether the federal income tax should be computed upon the basis of a single trust or three separate trusts; and upon the Board's finding and holding that three trusts were created, which were separately taxable, the Commissioner sought review in the Court of Appeals, which determined that there was in fact but a single trust and reversed the decision of the Board.

It would serve no useful purpose to enter upon further discussion of the propositions there and here considered. Suffice it to say that while we regret to differ from that distinguished court, we are satisfied that the Board properly reasoned and ruled that here three trusts were created, and the income from each was taxable accordingly and not as a single trust; and that the Board was right in determining there was no deficiency.

The decision of the Board of Tax Appeals is

AFFIRMED.

FILE COPY

FILED
DEC 13 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK,
TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY OF PETITIONER TO BRIEF FOR THE RESPONDENT.

CLAY JUDSON,
Counsel for Petitioner,
120 West Adams Street,
Chicago, Illinois.

WILSON & MCILVAINE,
Of Counsel.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
General Outline of Proceedings	1
Facts	3
Argument	7
Decision of Court Below	7
Respondent's Former Position	8
Respondent's Present Position	10
Petitioner's Position	10
First Amendment Creates Three Trusts	11
All Amendments Must Be Considered	14
When Considered Together the Amendments Clearly Express the Intention to Create Three Trusts	15
Respondent's List of Considerations in Support of His Position	16
Economic Interests of Beneficiaries Materially Changed by Amendments	22
Authorities Cited by Respondent	25
Other Authorities	30
Conclusion	31

CITATIONS.

Burnet v. Guggenheim, 288 U. S. 280 26
Burnet v. Wells, 289 U. S. 670 26
Campbell v. Commissioner, 15 B. T. A. 414 29
Commissioner v. McIlvaine, 78 F. (2d) 787 ... 2, 9, 17, 29, 31
Corliss v. Bowers, 281 U. S. 376 26
In re Colgrove's Estate, 221 N. Y. 455, (117 N. E. 813) 31
Lynchburg Trust & Savings Bank. v. Commissioner, 68 F. (2d) 356 (C. C. A. 4th) 29, 30
Lynchburg Trust & Savings Bank v. Commissioner, 27 B. T. A. 1182 29
Marble v. Marble's Estate, 304 Ill. 229, 136 N. E. 589 .. 8, 10
McFeeley v. Commissioner, ... U. S. ....., 80 L. Ed. 44, 56 S. Ct. 54 25
McIlvaine & Wilson v. Commissioner, 29 B. T. A. 304 ..... 28, 30, 31
Rauers v. Commissioner, 28 B. T. A. 516 29
Restatement of the Law of Trusts, Section 38, Comment a 16
Restatement of the Law of Trusts, Section 77 9
Snyder v. Snyder, 280 Ill. 467, 117 N. E. 465 ..... 8, 10
Sparrow v. Commissioner, 18 B. T. A. 1 29
State Savings Loan & Trust Co. v. Commissioner, 63 F. (2d) 482 (C. C. A. 7th) 28
Stevenson v. Lesley, 70 N. Y. 512 31
Tyler v. United States, 281 U. S. 497 26
Vanderpoel v. Loew, 112 N. Y. 167, 19 N. E. 481 31

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 169.

UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY OF PETITIONER TO BRIEF FOR THE RESPONDENT.

GENERAL OUTLINE OF PROCEEDINGS.

The petition for certiorari with brief in support thereof was filed on June 25, 1935. Certiorari was granted October 14, 1935. Petitioner elected to stand on its brief filed in support of the petition. Respondent filed a brief in opposition to the petition and has recently filed an additional brief on the merits.

This reply is made by petitioner so that its position with respect to certain of the facts stated and arguments made in respondent's last brief may be clarified. No effort will be made to restate the facts, authorities and arguments

contained in the petition for writ of certiorari and in the brief in support thereof, which the petitioner requests the Court to consider with this reply as fully stating the position of petitioner.

In 1913 John P. Wilson created a trust of which the petitioner herein was trustee. Pursuant to the power reserved in the trust agreement, it was four times amended by written instruments. The validity of the amendments as such is not questioned. By stipulation all issues were waived except one. (R. 75.) The sole question before this Court is whether the original instrument as amended created one or three trusts. If there is one trust, an additional tax is due, if three, no additional tax is due. The question is important not only because of the income tax features involved, but also because of its bearing on the administration of trusts generally.

The Board of Tax Appeals determined that there were three trusts. The Circuit Court of Appeals for the Second Circuit disagreed with the Board and held that there was but one trust. In the companion case of *Commissioner* v. *McIlvaine,* 78 F. (2d) 787, precisely the same question is involved in a case which is admitted to be substantially identical with the present case. There the Board of Tax Appeals again held that three trusts were created, and the Circuit Court of Appeals for the Seventh Circuit agreed with the Board, notwithstanding that the Court had before it the decision of the Circuit Court of Appeals for the Second Circuit in the instant case. There is thus a direct conflict between the two Circuits. Both cases are now before this Court.

Facts.

Since the first, second and third amendments were all in effect a number of years prior to 1924 and throughout all the years here involved, and since those amendments by their terms merely changed the original instrument, which remained in full force and effect except as changed, the document to be interpreted by this Court is the original instrument as changed by all the amendments and not the original instrument merely as changed by the first amendment. Therefore the language of the second and third amendments is at least as important as the language used in the first amendment, and all must be considered together as forming one instrument. The fourth amendment was adopted in 1928, and therefore was in effect for only a part of the period now being considered. The language used in that amendment, which was solely for the purpose of enlarging the power of the Trustee to borrow money, by its specific reference to the three trust estates, includes additional and cumulative evidence of the exact intention of the parties.

Respondent quotes from the first amendment but not from the later amendments. It is impossible by mere paraphrasing to adequately convey the real purpose and intent of the parties as disclosed by the modified trust agreement. The first three amendments appear on pages 49 to 55 of the record, and the last amendment appears on pages 82-83. They should be read in full if the real intention of the parties, as shown by the documents themselves, is to be completely understood. Brief quotations indicating their general scope are made (pp. 9-10) in the brief of petitioner filed in support of the petition for certiorari.

Respondent at several places in his brief (pp. 6-7) repeats the same error found in the statement of the court below, to the effect that after the amendments undivided

one-third interests in the original fund were assigned by the Trustee to each *beneficiary*. There can be no question, if this record is read as a whole, that there was never any assignment of any kind whatsoever to the beneficiaries as such. The assignments were in every case to the *separate trusts* set up for the several beneficiaries. The Assistant Comptroller of the United States Trust Company of New York, the Trustee in this case, testified (R. 89) that after the first amendment

> "* * * Three accounts were opened, one in the name of 'Trust under the Deed of John P. Wilson for John P. Wilson, Jr.'; one under the name or heading 'Trust under Deed of John P. Wilson for Anna W. Dickinson'; and one under the name of 'Trust under Deed of John P. Wilson for Martha Wilson'. The income, after this time, was credited to the individual accounts and all transactions affecting the trusts were put through the individual accounts. I mean by individual accounts, separate accounts. The property was divided on our property records, and the income and interest were credited separately. * * *"

There can be no question but that the Trustee credited the property and the income not to the individual beneficiaries but to the separate trusts set up for the individual beneficiaries. That situation is necessarily implicit in the present tax case, which is based on the contention of the Commissioner that additional taxes are due on income *accumulated by the Trustee*. The case would not be here if the income had been paid or credited to the individual beneficiaries. The only question is whether the accumulations are by three separate trusts or by a single trust.

On page 7 of respondent's brief is the statement that aside from the establishment of three separate accounts on the books, the petitioner treated the estate or property as held in one trust. This statement is not justified by the record. On the contrary, the record shows that the Trustee, after the amendments were in effect;

(1) Closed out on its books the old account kept for the single trust (R. 89, 90, 100):

(2) Opened up three new accounts, one for each of the separate trusts, and assigned an undivided one-third interest in the corpus of the old trust estate to each of the new trust accounts (R. 89, 90, 100);

(3) Caused the vault records to show that a one-third interest in the securities held in its vaults was owned by each of the three separate trusts (R. 99-100);

(4) Divided all income as received among the separate trusts (R. 89-90);

(5) Charged the disbursements as made to the separate trusts (R. 101);

(6) Made regular reports to the respective beneficiaries as Trustee of three separate trusts (R. 94-95);

(7) Filed information returns (Form 1041) to the Federal Government as Trustee of three separate trusts and filed income tax returns (Form 1040) as Trustee of three separate trusts (Exhibits 4 to 39, R. 103-143);

(8) Figured its commissions separately on each trust (R. 101);

(9) And in at least one year prior to 1934 credited separately to the several trusts refunds paid by the Federal Government on account of income taxes, the payment to one of the trusts having been received long after the payments to the others had been made. (R. 101.)

Respondent further states, on page 7 of his brief, that the petitioner, the United States Trust Company of New York, kept only one bank account into which all receipts of cash went and from which all disbursements of cash were made. So long as the books of the Trustee showed clearly the interest of each of the three separate trusts in that account, that fact, as stated, could have no bearing on

the decision in this case. Respondent, however, fails to tell the whole story as found in the record. The testimony in the case was not that the cash held for these three trusts was kept segregated in a single account, but that all of the cash held by the United States Trust Company of New York, in the thousands of trusts of which it is Trustee (including, of course, the three Wilson trusts) was all deposited in one account, and that in this respect the three Wilson trusts were treated exactly as all the other trusts administered by the United States Trust Company of New York. (R. 98, 102.)

Respondent also says (page 7) that the amendments to the deed of trust were made for the purpose of identifying the interests of the respective beneficiaries and to reduce taxes on undistributed income by having the same taxed as income of three separate trusts rather than as income of one trust. The testimony on page 83 of the record, to which counsel refers, was given in answer to questions propounded by counsel for respondent on cross-examination. The record reads as follows:

> "The purpose of the amendment of September 21, 1918, was to have the trust estate divided into three separate trust estates and constitute three separate trusts, one for each of the three children of John P. Wilson, the original creator of the trust; also the question of minimizing taxes entered into the matter. * * *"

ARGUMENT.

Decision of Court Below.

The validity of the amendments is not in question. They were adopted in the form required by the provisions of the original trust indenture permitting the alteration, change or modification of that instrument to any extent and in any respect whatsoever.

The decision of the Circuit Court of Appeals for the Second Circuit below is based on the fact that the Trustee did not *physically* divide the aggregate fund, and assign specific shares of stock, specific bonds, and specific dollars to each of the three trusts. The only reason advanced by the court for its decision that only one trust was created, is that the purpose of the parties to create separate and independent trusts was ineffective because an undivided interest in a definite aggregate fund is too indefinite to form the corpus of a separate trust. A brief quotation from the decision of the court will make this position perfectly clear (R. 192, 193):

> "• • • Acquired property after the first amendment, as well as before, was maintained in the aggregate, and only undivided interests were assigned to the respective accounts set up for the beneficiary.[1] The income derived from all the trust property and each and every item thereof was assigned to the respective accounts, one-third to each account. While this was an allocation to the respective accounts in equal shares, it was held by the trustee in one fund deposited in a single account. • • •
>
> • • • • • •
>
> "Under applicable rules of law the claim of three trusts must fail. The amendments resulted only in setting up separate accounts for the beneficiaries [sic],

(1) This is again a misuse of the word beneficiary, the accounts were really set up in the name of the separate trusts.

which recorded their undivided one-third interests. The property itself continued to be held in the aggregate as a single trust fund, *and consequently* there was but one trust estate, rather than three, during the taxable years in question. * * *[2]

* * * * * *

"* * * In the instant case, the deed provided that it should be construed according to the laws of the state of Illinois and, in view of what was said in *Snyder* v. *Snyder, supra,* the amendments were ineffective to create separate and independent trusts for each of the beneficiaries *for lack of a definite and separate corpus.*" (Italics ours.)

RESPONDENT'S FORMER POSITION.

Until respondent's last brief was filed, respondent had taken this same position, contending that the reason three trusts had not been created was because an undivided interest is not sufficiently definite to constitute the corpus of a separate trust estate. In these very proceedings, in his brief in opposition to the petition for certiorari, respondent, while denying that he contends an undivided interest in property may not be the subject of a trust, nevertheless says (p. 11):

"All that the amendments accomplished was to set up separate accounts for the beneficiaries, [sic] recording their undivided interests in property held under the original trust deed and additions thereto. Such property was held in aggregate as a single trust and there was not at any time a division thereof. *The amendments cannot be effective as erecting separate and distinct trusts for lack of definite subjects.*" (Italics ours.)

In respondent's brief in opposition to the petition for certiorari (p. 10) he again cited the two Illinois cases, *Marble* v. *Marble's Estate,* 304 Ill. 229, 235, and, *Snyder* v. *Snyder,* 280 Ill. 467, 469, both of which, and particu-

(2) Citing, among other cases, *Marble* v. *Marble's Estate,* 304 Ill. 229, 235, 136 N. E. 589. *Snyder* v. *Snyder,* 280 Ill. 467, 469, 117 N. E. 465.

larly the *Snyder* case, had been relied upon in the decision by the Circuit Court of Appeals. These cases merely lay down the general rule that three conditions must concur in the creation of a trust—there must be sufficient words to raise it, there must be a definite object, and there must be a definite subject. The only one of these three conditions which respondent or the Circuit Court of Appeals suggested was not met in the instant case was the condition requiring a definite subject, that is, a definite corpus. This opinion of the lower court (and this position of respondent) was based solely on the proposition that undivided interests in an aggregate fund (which was the situation here) are too indefinite to form the corpus of a separate trust.

The authorities do not sustain any such principle and we believe that the Court is entitled to take judicial notice of the fact, if this record does not establish it, that such a contention is in conflict with the administrative practices of trustees generally. There can be no question but that an undivided interest in a larger fund is sufficiently definite to properly and legally constitute the corpus of a separate trust. We call attention again to the authorities cited in petitioner's brief in support of the petition for certiorari, pages 20 to 22. Since the printing of that brief the final draft of the "Restatement of the Law of Trusts" has been published by the American Law Institute. Section 73 of Tentative Draft No. 1, cited in the brief, has been published in the final draft as Section 77.

That there can be no justification for the decision of the Circuit Court of Appeals, at least on the grounds laid down by that court, is, we submit, perfectly plain. Not only did the Circuit Court of Appeals for the SEVENTH Circuit, after careful consideration of the opinion of the Circuit Court of Appeals for the Second Circuit in the instant case, definitely disagree with that court, (*Commissioner* v. *McIlvaine*

& Wilson, 78 F. (2d) 787, opinion also printed in supplement to brief in support of petition for certiorari) but even respondent has now apparently abandoned that position entirely. In the last brief filed by respondent there is no mention whatsoever of *Snyder* v. *Snyder,* 280 Ill. 467, or *Marble* v. *Marble's Estate,* 304 Ill. 229, and the argument which apparently was persuasive in the Circuit Court of Appeals below has been entirely abandoned. In his brief on the merits, respondent nowhere contends that "the amendments cannot be effective as erecting separate and distinct trusts for lack of definite subjects" (as stated by respondent in his brief in opposition to petition for certiorari) or that "the amendments were ineffective to create separate and independent trusts for each of the beneficiaries for lack of a definite and separate corpus," (as stated by the lower court).

The law is plain that an undivided interest constitutes such property as may legally be conveyed in trust and as may legally constitute the corpus of a separate trust.

Respondent's Present Position.

The present position of respondent seems to be that the amendment of September 21, 1918, was ineffective to convert a single trust estate into three separate trusts, and that although the later amendments are admittedly a factor in construing the first amendment, they do not succeed in dividing the old trust into three new trusts.

Petitioner's Position.

It is petitioner's position that respondent is demonstrably wrong with respect to both phases of his contention. The present argument of respondent, however, does narrow the issues as petitioner has sought to narrow them from the beginning of this litigation. It would seem that it can now

be accepted as a premise that except as the Court might find some ambiguity in the language used in the amendments, it is the intention of the parties, as expressed in those amendments, which must control the decision of this case.

Petitioner contends, first, that even if the amendment of September 21, 1918, is considered alone and independent of the later amendments, it adequately expressed the intention and purpose to create three separate trusts; second, the first amendment should not be construed alone and without regard to later amendments because the later amendments also changed, and in several instances rechanged, the form of the trust agreement, and it is the instrument as so changed and which was in effect during the taxable years with which the Court is concerned; and, third, if the language of the instrument as changed by all of the amendments and as in effect during the taxable years is considered there can be no possible question but that it was the clearly expressed intention of the parties to create separate trusts.

First Amendment Creates Three Trusts.

Respondent argues that the language of the first amendment, considered by itself, is insufficient to divide the old single trust into three new trusts. May we call attention to the language of the amendment as quoted by counsel (pages 11-12 respondent's brief).

First it provides that the trust shall be "divided". Nothing more futile can be imagined than the use of this word unless an actual legal *division* of interests was intended.

It is further provided that the trust shall be divided "into three separate and equal parts or shares." It is thus plain that the division was intended to bring about a legal *separation.*

Next is the provision that undivided interests in the trust fund may be "assigned" to each of the separate shares into which the old trust shall be divided. Unless these shares were legally separate trusts, why provide for an assignment to each of them?

The legal separation of the parts into which the trust is to be divided is further shown by the provision that such parts "shall severally be designated" by the respective names of the particular beneficiaries for whom each of said parts is to be held.

The second paragraph of the amendment provided in part as follows (R. 50):

> "*Second.* The whole of the net income received from each share during the remainder of the year 1918, and one-half of such net income received after December 31st, 1918, and during the life of the said John P. Wilson, the creator of said trust, shall be accumulated and added to the principal of such share; provided, however, that each of the undersigned [beneficiaries] upon his or her written request, approved in each case by said John P. Wilson and delivered to the said Trustee, shall be entitled to receive the whole or any part of the one-half of the said net income of his or her share of said trust estate * * *."

It is thus plain that the parties contemplated in clearly expressed language that different amounts of income might be paid out of the different shares, and the shares might thus by reason of differing accumulations become unequal in value and different in character of investments held.

Furthermore, the first paragraph of the amendment, which gave to the Trustee the right to assign undivided interests to each share, did not require the Trustee to do so. It was entirely within the realm of possibility that the Trustee might have made different investments on behalf of each share, and had the accumulations been different by

reason of any action taken under the second paragraph, it is obvious that the Trustee would have been compelled to have invested varying amounts in the several shares. Apparently it is the position of respondent that the Trustee was authorized by the trust instrument only to make investments in undivided interests (p. 13, respondent's brief). The language actually used, after providing for the division of the trust estate into three separate and equal shares, is as follows:

> "* * * to which may be assigned undivided interests in the whole or any part of the said trust estate."

This language, we submit, can only mean that the Trustee was given the privilege of investing in undivided interests, but that it is not required to do so.

Counsel places great emphasis on the fact that the words "parts" or "shares" were used in the first amendment in connection with references to the old trust estate. He says, page 13 of his brief, that a more usual phrasing would have been to declare that the "three estates" were each to be held in trust for one of the beneficiaries. In fact respondent's main argument now seems to be that in the first amendment the words "which parts or shares" were used instead of "which trust estates." That would be a narrow ground on which to base a decision in this case, particularly where all succeeding amendments repeatedly used the very words suggested by counsel!

We submit that any unprejudiced reading of the first amendment alone can lead only to the conviction that it was the intention of the parties to legally separate the trust estate into three separate trusts.

ALL AMENDMENTS MUST BE CONSIDERED.

But the first amendment cannot and should not be read alone and isolated from the later amendments, in which amendments phrases such as the "three trusts", or the "three separate trusts", are found many times.

The original instrument, except as changed, and the changes in effect during the taxable years must all be considered together to determine the intention of the parties. One of the amendments can no more be considered by itself without regard to the others than one sentence in one of the amendments can be considered without regard to the sentences adjacent to it. It must be remembered that each one of the amendments merely changed the original instrument as theretofore modified, in the specific respects covered by the particular amendment. It must also be remembered that each amendment was adopted pursuant to the power reserved in the original instrument, and that the sentence in which the power was reserved ended as follows (R. 48):

> "* * * and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

The very source of the power to modify the document thus provides that each modification must be read into the instrument as theretofore modified. The first, second, and third amendments became effective in 1918, 1919 and 1920, respectively, and the fourth amendment in 1928. The years involved in this litigation are the years 1924 to 1929, inclusive. There is no justification, therefore, for the position of the government that the first amendment must be considered alone. As a matter of fact, none of the provisions of the amendment relating to the payment of income (the

whole of the second paragraph) were any longer in force during the years under consideration. Those provisions were entirely changed by the second amendment, which in that respect was again changed by the third amendment.

The technical requirement of the original indenture is conclusive in requiring this Court to examine *all* the instruments in order to determine the intention of the parties who drew them.

When Considered Together the Amendments Clearly Express the Intention to Create Three Trusts.

Any doubt as to the meaning of the first amendment would be entirely dissipated by the language in the later amendments. On this point, the Board of Tax Appeals, in its opinion, said, (R. 64-65):

> "In the first amendment provision was made for the division of the trust estate into three separate and equal parts, one for each of the three beneficiaries. Any doubt as to the meaning of this language is cleared up by the modifications made by the agreement executed on June 19, 1919. There the beneficiaries, with the written approval of the grantor, stated that one-half of the net income of 'each of the three trust estates' should be disbursed in a prescribed manner; that any net income from 'each of said trusts' not paid over to the beneficiaries, should be added to the principal of the trust fund from which it was derived; and that upon the termination of the 'trusts' the corpus of the 'several trust estates' held by virtue of the indenture should be distributed as provided for. Language of the same general character was used in amendments made on December 1, 1920, and April 25, 1928."

The repeated use in the last three amendments of the phrases "each of the three trust estates", "each of said trusts", "the several trust estates", "each of said separate trusts", "all of said trusts", "each separate trust estate", "the separate trust estate", and "said trusts",

and the requirements in those amendments with reference to the payment of income and the distribution of the principal from the several trust estates or the separate trust estates, leaves no possible doubt as to what the instrument as changed by all the amendments means.

The words used are consonant only with the intention to create separate trusts. They cannot be distorted into disclosing any other purpose.

We agree with the respondent that the intention of the parties must be determined from the language used in the instruments unless there is some ambiguity in that language. If there were any ambiguity in the first amendment, considered alone, there is certainly none in that amendment when considered in connection with the language appearing in the following amendments. We do not therefore believe that parol evidence of the purpose of the parties to create three separate trusts (R. 83) is of any particular significance. If, however, the meaning of the first amendment should be deemed to be uncertain or ambiguous, evidence of the circumstances giving rise to its adoption, including the purpose of the parties, would be admissible as an aid to its interpretation. (Restatement of the Law of Trusts, Section 38, Comment a.)

Respondent's List of Considerations in Support of His Position.

Respondent, on page 17 of his brief, seeks to list a preponderance of reasons, in the numerical sense, why these amendments should be held to have failed to accomplish the purpose of the parties. Were it useful to do so, we might set forth a large number of considerations supporting petitioner's position. Each of the various provisions in each of the amendments, the repeated acts of the Trustee in treating the trusts as separate, and the aqui-

escence of the parties in such action, might all be set forth as separate reasons, but we believe that nothing is gained by such treatment of the facts. It might, however, be enlightening to examine for a moment the various considerations which the Government sets forth in support of its position.

1. It is alleged that the separate trusts or accounts relate only to undivided interests in a fund which originally constituted the corpus of a single trust. This is the only place in the respondent's brief where apparently respondent goes back to the old position originally taken in this case, namely, that undivided interests in a single fund are too indefinite to form the corpus of a separate trust. If, however, it is legally proper to create a separate trust of which the corpus is an undivided interest, a proposition which the authorities clearly establish and which apparently the Government no longer denies, then obviously the fact that the corpus of these separate trusts were undivided interests in an aggregate fund gives no support to the Government's contention.

2. Respondent says the trusts were created by a single instrument. The Government makes this statement apparently in the belief that separate trusts cannot be created by a single instrument, or at least that the use of a single instrument in carrying out the intention of the parties has some bearing on the question. We confess that we cannot follow this argument. This Court can take judicial notice of the fact that perhaps the most usual way of creating separate trusts is by will. Certainly there can be no question, and there has never been any question in this case, but that it was perfectly proper to create separate trusts by a single instrument. The Circuit Court of Appeals for the Seventh Circuit, in *Commissioner* v. *McIlvaine and Wilson,* 78 F. (2d) 787 (also printed in the

supplemental brief in support of the petition for writ of certiorari in this case, page 8) said:

> "It is well settled that separate and several trusts may be created by the same instrument, and be administered by the same trustees. *DeVer H. Warner, Trustee,* v. *Commissioner,* 7 B. T. A. 1292 (affirmed 26 F. (2d) 1023); *Lynchburg Trust & Savings Bank* v. *Commissioner,* 68 F. (2d) 356; *Carruth* v. *Carruth,* 148 Mass. 431; *Claflin* v. *Dewey,* 177 Mass. 166."

3. Respondent states they were to be administered by a single Trustee. What possible bearing can this have on the question? Surely the United States Trust Company of New York can be Trustee of a very large number of trusts. Nor is there any difference in substance, so far as income taxes are concerned, whether the United States Trust Company remained Trustee of each of these three trusts or separate trust companies were chosen for each trust.

4. Respondent argues that the first amendment used language more consonant with establishing separate accounts within the original trust estate than with its termination and the creation of new trusts. We believe we have shown that the language used in the first amendment, even if considered alone, but particularly when considered in conjunction with the language used in the later amendments, is only consonant with the establishment of separate trusts. If separate trusts were not created much of the language used must be entirely ignored.

5. The Government states that the Trustee "and the beneficiaries" construed the amendment [sic] as though it effected no legal division into separate trusts, because "the petitioner" continued to act as though it were a single trustee for a single trust. This statement is not justified by the facts in the record, and is clearly baseless on two separate grounds. First of all, we ask, how the action of the Trustee, whatever it may have been, can

constitute a construction of the instrument on the part of the beneficiaries? It must be remembered that it was the beneficiaries and the settlor of the trusts whose intention controlled. The Trustee had no power to amend the instrument. The amendment had to be by the beneficiaries and the settlor. What the Trustee did could not be binding upon them except in so far as they acquiesced in actions believed by them to have been based on the assumption that there was only one trust. We have already shown (p. 5, *supra*), in some detail that the various acts of the Trustee, as disclosed by the record, clearly indicated that the Trustee did not act as the trustee for a single trust, but as the trustee of three different trusts, and it was so considered by the beneficiaries. Not only was the language used by them in the various amendments clear on that point, not only did they regularly receive reports from the trustee as trustee of three separate trusts, but the letter written by John P. Wilson, Jr., on December 28, 1922, after the first three amendments were in effect unequivocally shows what his interpretation of the amendments was. This letter was originally marked for identification by the Government as Respondent's Exhibit A. (R. 85.) The Government, however, apparently decided not to introduce it, and it was therefore put in evidence by petitioner as its Exhibit 56. (R. 102.) The letter (R. 183), was addressed to the Trustee and read in part as follows, after quoting from the Amendment of December 13, 1920:

> "In accordance with the clause which I have just quoted, I would appreciate your having proper entries made on your books, as of December 31, 1922, and on the thirty-first of December in each year thereafter, showing that all of the net income on hand on each December 31st, was transferred to the principal of the separate trusts from which the income was derived. I should like to have the statements rendered to me show that this has been done so that the provisions of the trust as amended may be strictly carried out."

6. The Government states that the beneficiaries exercised mutual control over the income distributions from each account. Respondent may believe that this is an unusual provision, but certainly we can find nothing in the provision which has any bearing on the question at issue. It is just as unusual to give one beneficiary control over the amount of income which another may withdraw from a single trust as it would be to give the beneficiaries of the separate trusts control over the income distributed from the other separate trusts. Furthermore no beneficiary had any power with respect to income distributions to any other beneficiary until the *second* amendment. If item six in the government's list is to be given any weight therefore it can only be on the assumption that all the amendments are to be taken into account in determining the intention of the parties. The government cannot on the one hand argue that the first amendment alone is the one which must be interpreted, without any consideration being given to the language in the later amendments, and at the same time argue that one of the provisions in the second amendment is inconsistent with the intention to create three trusts. We do not believe that the item has the effect which the government claims, but we do insist that all of the amendments must be considered for all purposes.

7. Finally, the Government states, as the last consideration in support of its position, that the amendments provided that the distribution of income from and interests in the corpus should always be equal. Here again the Government refers not to the first amendment nor to the second, because such provision appears for the first time in the third amendment. But in any event what light does the desire of the settlor and of the beneficiaries to maintain these separate trusts on an equal footing as between the settlor's children throw on the question involved?

There are occasions when a number of factors added

together may take on a significance which no one of them considered alone possesses. This general rule, however, has no practical application to the present situation. Even if the items listed by the Government on page 17 were based upon undisputed facts none of them, except items 4 and 5, whether considered singly or as a group, would have any weight in this case.

If it were true, as stated in item 4, that the language of the first amendment was more consonant with the establishment of separate accounts within a single trust than with the creation of three new trusts, that fact would have to be considered in resolving the question before the Court, provided no help could be derived from the later amendments. We submit, however, that the language of the first amendment is meaningless unless it expresses the intention to create separate trusts, and even if there were some doubt about the meaning of that language it must be considered in the light of the provisions of the later amendments. When so considered, no question can possibly remain as to the real intention of the parties.

If it were true, as stated by the Government in item 5, that the Trustee and the beneficiaries construed the first amendment as constituting a single trust, that might have some bearing on the interpretation of the language used, assuming that it was ambiguous. We submit, however, that not only is the language clear, particularly when taken in connection with the second, third and fourth amendments, but the record does not bear out the contention that the Trustee and the beneficiaries construed the amendment as constituting a single trust.

The question to be answered in this case is, what was the intention of the parties as disclosed by the language used in the instruments? We seriously doubt whether the attempt of the Government to list various considerations

which it believes to have bearing on the question is helpful. Particularly, we doubt whether the fact that, as listed by the Government, there are numerically more considerations believed by the Government to support the position of respondent than there are considerations believed by the Government to support the position of the petitioner is of any significance here. There are a large number of considerations which in the absence of a clear expression of the intention of the parties might have some weight. Where, however, the parties have clearly expressed their intention, as they have done in this case, there would seem to be no occasion for seeking to determine that intention by the recitation of such facts, as, for example, that the several trusts were created by a single instrument.

Economic Interests of Beneficiaries Materially Changed by Amendments.

Respondent argues that the conclusion which it seeks to draw from its list of considerations finds support from the fact that from the economic viewpoint the interests of the beneficiaries was the same after as before the amendment of the original indenture. In the first place, this proposition is not factually correct. The original trust instrument provided for the payment of one-third of the income to each of the three children of the settlor. The first amendment provided for the payment of one-half the net income from each of the separate trusts to the beneficiary for whom that trust was held, with the proviso that with the consent of the settlor either of the beneficiaries might draw down the other half of the income. If the other half of the income was not paid out under the proviso it was to be accumulated and added to the principal of the divided share set aside and held for that beneficiary.

In the second amendment there were changes not merely with respect to the enjoyment of income, but with respect to the distribution of principal. It was there specifically stated that one-half of the net income of each of the three trust estates should be paid over to the beneficiaries entitled thereto, and the other half was only to be paid over when requested by an instrument signed by two of the named beneficiaries. This is the first time that the several beneficiaries were given any mutual control over any part of the income to be paid to the other beneficiaries. But the language in this amendment is so definite that there can be no question but that the parties were dealing with separate trusts. In the original trust instrument each beneficiary had a general power of appointment with respect to the payment of one-third of the income from the whole trust estate. By the second amendment, however, this power of appointment was limited to the issue of the settlor, the surviving wife or husband of the deceased beneficiary, or to charity.

With respect to the distribution of principal the original trust agreement gave to each of the beneficiaries a general power of appointment over one-third of the principal of the trust estate. By the second amendment this general power of appointment was limited so that it could only be exercised in favor of the issue of the settlor, the surviving wife or husband of the deceased beneficiary, or for charitable purposes.

It is significant also that the tax in this case is on *accumulated* income, which by the terms of the documents became a part of the principal. As we have just shown, the economic interest of the beneficiary in this accumulated income, frozen into capital, was far different after the amendments than before.

The third amendment again materially changed the rights

of the beneficiaries with respect to the enjoyment of income. Instead of the outright payment of one-half of the income from each of the separate trust estates, as provided by the second amendment, it was provided that only so much of the net income from each of the separate trust estates should be paid out as was requested or directed by one or more instruments in writing signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts.

We submit, therefore, that it is incorrect to state that the beneficiaries had an interest in the subject matter of these trusts which was from an economic point of view precisely the same after as before the amendments to the original indenture. The fact is that the amendments materially changed the rights of the beneficiaries with respect to the enjoyment of income, and materially changed the powers of each beneficiary with respect to the appointment of income and of principal after the death of each beneficiary.

Even if the statement made by respondent that there was no perceptible change in the economic interests of the beneficiaries were true, that fact can have no bearing in this particular case. It is not arguable that if the original instrument had been drawn in the form which that instrument took on after the adoption of the several amendments, separate trusts would have been created. Assume that the settlor of a trust owned an office building in the city of Chicago. Assume further that he conveyed an undivided one-third interest in this office building to each of three separate trustees for the benefit of each of his three children, respectively. The economic interest of each beneficiary in this situation is quite similar to what it would be if the whole property were conveyed in a single trust to one trustee for the equal benefit of the three children. If

the instruments in the assumed case provided for the distribution of all of the income currently to the beneficiaries of each of the separate trusts, or provided for the distribution of one-third of the total income to each beneficiary in the event of a single trust, it is clear that the amounts received by each beneficiary would be substantially the same. That, however, would not make the separate trusts into a single trust any more than it does in the instant case. Here we are dealing with an act of Congress which taxes the accumulations of separate trusts separately. If there is any fundamental logic or ethics in the situation it would lead to the conclusion that accumulations primarily for the benefit of one of these children ought not to be added to the accumulations primarily for the benefit of the other two children for the purpose of determining the tax rate on those accumulations.

Authorities Cited by Respondent.

Respondent in his brief apparently admits by implication that literally construed the documents would create separate trusts and the Federal statutes would so tax them. He says, on page 19, "Unless a barren literalism is to be the guide * * *" the income should be taxed as the income of a single trust. Possibly Congress has the constitutional power to tax these separate trusts as though they were a single trust. The point is, however, that Congress has not done so. If there were any doubt as to the intent of the statute on this point that doubt would have to be resolved in favor of the taxpayer in accordance with the principle stated many times by this Court, and again laid down no longer ago than November 11th, 1935, in *McFeeley* v. *Commissioner* (..... U. S. .....; 80 L. Ed. 44; 56 S. Ct. 54) and the other cases argued with that case.

Respondent cites several cases on page 18 of his brief

in connection with the argument that there was no perceptible change in the economic interests of the beneficiaries brought about by the amendments and that therefore the legal change in the situation should be ignored. In *Corliss* v. *Bowers*, 281 U. S. 376, *Tyler* v. *United States*, 281 U. S. 497, and *Burnet* v. *Wells*, 289 U. S. 670, the Court in each case was passing upon the constitutionality of a provision in a Revenue Act. Those decisions might have been in point had Congress passed a law amalgamating these separate trusts into one trust for purposes of taxation. They can have no bearing on the question, however, so long as Congress has not passed such a law but continues to tax separate trusts separately. In *Burnet* v. *Guggenheim*, 288 U. S. 280, the question was whether the cancellation of a power of revocation in a trust agreement constituted a gift under the provisions of the Gift Tax law. The Court decided that the reservation of the power of revocation in the original trust instrument made the gift inchoate and imperfect until the cancellation of the power of revocation. In reaching the conclusion that the gift actually came into effect when the power was canceled, the Court was influenced by a consideration of the actual economic benefits on which the tax was paid. We submit that the facts there before the Court and the provisions of the statute were so different in actuality and in principle from those in the instant case that the decision can have no bearing here.

The Government argues that if the original trust be divided into three separate trusts, one for each of the children of the settlor, there is no reason why it might not be further subdivided and resubdivided into such a number of trusts that the accumulation in any one of them would be so small as to require no tax at all. It is not necessary for us to speculate on the nature of the decision which would be rendered in such a case. There is no such situation be-

fore this Court. We suggest, however, that the case assumed by the Government is primarily one for the consideration of Congress.

The Government apparently believes that its argument on this point is strengthened by the fact that the original settlor in this case created another trust for the same beneficiaries, the tax situation with respect to which is now before this Court in No. 566. Although the Government has contended that each of the two trusts originally created by the settlor still constitute a single trust in spite of the amendments thereto, the Government has never contended that these trusts should be amalgamated into one. In the stipulation filed in the Board of Tax Appeals with respect to both cases it is specifically provided that the question in each case is whether there is one trust or three and all other issues are waived. The Government, therefore, at least admits that the two trusts originally created by the settlor for these three beneficiaries are separate and distinct.

The most that can be said for the Government's argument is that it might be persuasive with Congress. The argument cannot be effective beyond that point. We assume that the Government does not deny that three trusts could have been created here. Suppose three trusts exactly like the three trusts which petitioner now contends did exist had originally been set up, one for each child of the settlor, with provisions in each case for modification and creation of a greater number of trusts through such modification. Could the existence of that power of modification be cited as a reason for denying that three trusts existed to start with? When the modifications of the original trust instrument were adopted in this case the parties had the power to terminate the old trust and to set up three entirely new trusts had they desired to do so. They chose, however, to bring about the same result through modifications of the original

instrument. The fact that the power to amend and modify or to terminate the three new trusts still exists can have no bearing on the legal question here involved, which is, are there three trusts, or is there only one trust?

In the instant case the settlor created a single trust for his three children. The amendments divided this single trust into three separate trusts, one for each child. Is there any reason, logical, ethical or legal why this could not be done? Certainly no reason can be found in the statutes enacted by Congress.

We agree with the Government that most of the decisions of the lower Federal Courts are not particularly helpful in the determination of this case. As stated by the Board of Tax Appeals in its decision in favor of the taxprayer in the companion case of *McIlvaine & Wilson* v. *Commissioner*, 29 B. T. A. 304, at 311:

> "* * * In the final analysis cases of this sort must stand or fall on the basis of their own peculiar facts. It has been said that 'no will has a twin brother.' * * * The same is equally true as regards instruments executed with respect to the creation of trusts."

The Government has cited and discussed a number of cases on pages 20 and 21 of its brief. Because we are in agreement that each of these cases must be judged on its own peculiar facts, we do not believe a detailed discussion of them would be particularly enlightening. We desire to call the Court's attention, however, to several points in connection with these citations. The first case cited is *State Savings Loan & Trust Co.* v. *Commissioner*, 63 F. (2d) 482 (C. C. A. 7th). In that case Judge Evans in the opinion of the Court said, page 483:

> "* * * The issues arise out of and are determined by a consideration of the trust agreement."

In that trust agreement there was nothing which purported to set up separate trusts and the Court found that only one trust was created. *This same court*, however, when

the case of *Commissioner* v. *McIlvaine & Wilson,* (78 F. (2d) 787) came before it, a case which is admittedly identical in all substantial respects with the instant case, decided that the instrument clearly created three separate trusts.

The Government also cites several decisions of the Board of Tax Appeals. Among these is *Rauers* v. *Commissioner,* 28 B. T. A. 516. It is not necessary for us to question the soundness of that decision as there was nothing in the will being interpreted in the *Rauers* case which purported to separate the single fund into separate and distinct trusts. It is worth noting, however, that the Board cited in the *Rauers* case, in support of its decision, an earlier decision of the Board, *Lynchburg Trust & Savings Bank* v. *Commissioner,* 27 B. T. A. 1182. The latter decision was reversed by the Circuit Court of Appeals for the Fourth Circuit in *Lynchburg Trust & Savings Bank* v. *Commissioner,* 68 F. (2d) 356 (C. C. A. 4th). We admit that the facts in the *Lynchburg* case are distinguishable from those at bar, but we submit that a reading of the instrument before the Court in the *Lynchburg* case can only lead to the conclusion that the language used, which the Court held created separate trusts, was far less positive in that respect than the language of the amendments now before this Court.

The Government also cites *Sparrow* v. *Commissioner,* 18 B. T. A. 1, and *Campbell* v. *Commissioner,* 15 B. T. A. 414. In neither of these cases was there any provision in the documents before the Board expressing any intention to create separate trusts. The only argument made in the *Sparrow* case in support of the contention that there were separate trusts was that a decision of the Supreme Court of the County of New York necessarily involved a conclusion that there were three trusts although the testator

had not so provided. The Board in deciding that there was a single trust, said page 11:

> "• • • There is no statement in the interlocutory decree or the final judgment of the Court that the proper construction of the will of Edward W. Sparrow is that three trusts were created. • • •"

Whatever persuasive force these decisions of the Board of Tax Appeals might have had in this case (and we submit that on the facts they have no such force) would be wholly nullified by the fact that the Board of Tax Appeals in the instant case found as a fact and decided that three trusts had been created, and likewise found as a fact and decided that three trusts had been created in the companion case of *McIlvaine & Wilson* v. *Commissioner*, 29 B. T. A. 304.

Other Authorities.

The Government states that petitioner relies on one case, *Lynchburg Trust & Savings Bank* v. *Commissioner*, 68 F. (2d) 356 (C. C. A. 4th), (Certiorari denied 292 U. S. 640). The Government apparently ignores the cases cited in the petition for certiorari and in the brief in support thereof, which we ask the Court to consider on behalf of petitioner in this case. It is true that the occasion for deciding the question as to whether a trust instrument creates one or more trusts does not often arise. It does arise in connection with Federal income taxes, and it arises in the State of New York in connection with the rule prevailing in that state as to the length of time a trust may continue in existence. We submit that the language used in the several New York cases cited by petitioner, which was held in those cases to create separate trusts where property was held by a single trustee and the main fund was kept *in solido*, undivided shares being set apart for each of the separate trusts, was much less positive than the language

used in the instant case. See: *In re Colgrove's Estate*, 221 N. Y. 455, at 459 (117 N. E. 813, 814); *Stevenson* v. *Lesley*, 70 N. Y. 512, 516; *Vanderpoel* v. *Loew*, 112 N. Y. 167, 177, 179, 180 (19 N. E. 481, 482, 483, 484).

We submit that insofar as the authorities can be helpful at all in determining the question whether the language used in the instruments now before this Court creates separate trusts, those authorities clearly indicate that separate trusts were created here. In none of the cases cited by the Government was the language as specific with respect to the creation of separate trusts as it is here. We have no quarrel with the decision in those cases. On the other hand, we have cited a number of cases where the Courts have decreed that separate trusts were created, by language less definite than in the instant case, although perhaps more specific than in the cases relied upon by the Government. Of more weight, however, are the decisions of the Board of Tax Appeals in *McIlvaine & Wilson* v. *Commissioner*, 29 B. T. A. 304, and in the instant case, these cases being substantially identical, and the decision of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner* v. *McIlvaine & Wilson*, 78 F. (2d) 787, rendered after a careful consideration of the decision of the Second Circuit in the instant case.

Conclusion.

We respectfully ask this Court to reverse the decision of the Circuit Court of Appeals for the Second Circuit, not only because the reasons given by that Court for its opinion are contrary to well established principles of law, but primarily because the language used in the instruments now before this Court clearly expresses the intention of the parties that separate trusts were to be created, and because nothing which was done has prevented that clearly

expressed intention from being realized. If separate trusts are under certain circumstances to be amalgamated and treated as one for purposes of taxation, it should be done by act of Congress and not by the Courts. The Internal Revenue laws governing these cases provide for the taxation of separate trusts separately. These are separate trusts and they must be so taxed.

Respectfully submitted,

CLAY JUDSON,
Counsel for Petitioner.

WILSON & MCILVAINE,
Of Counsel.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	8
Conclusion	14
Appendix	15

CITATIONS

Cases:	
Campbell v. *Commissioner*, 15 B. T. A. 414	12
Commissioner v. *McIlvaine & Wilson*, decided July 19, 1935	13
Johnson v. *United States*, 65 C. Cls. 285	12
Leach v. *Godwin*, 198 N. Y. 35	10
Marble v. *Marble*, 304 Ill. 229	10
Rauers v. *Commissioner*, 28 B. T. A. 516	12
Snyder v. *Snyder*, 280 Ill. 467	10
Sparrow v. *Commissioner*, 18 B. T. A. 1	12
State Sav. Loan & Trust Co. v. *Commissioner*, 63 F. (2d) 482	12
Thomas v. *Clay*, 187 N. C. 778	10
United States v. *Phellis*, 257 U. S. 156	9
Statutes:	
Revenue Act of 1924, c. 234, 43 Stat. 253:	
Sec. 219 (U. S. C., Title 26, Sec. 960)	16
Sec. 225 (U. S. C., Title 26, Sec. 966)	16
Revenue Act of 1926, c. 27, 44 Stat. 9:	
Sec. 219 (U. S. C. App., Title 26, Sec. 960)	66
Sec. 225 (U. S. C. App., Title 26, Sec. 966)	16
Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:	
Sec. 143	15
Sec. 161	15
Sec. 162	16

7709—35——1

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee under deed of trust of John F. Wilson, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 95–105) is not reported. The opinion of the Circuit Court of Appeals (R. 272–278) is reported in 75 F. (2d) 973.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 11, 1935 (R. 278). A petition for rehearing filed March 27, 1935, was denied on

March 27, 1935 (R. 279–280). The petition for certiorari was filed June 25, 1935. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A deed creating a single trust for the equal benefit of three beneficiaries was amended, whereby a separate account was set up for each beneficiary and an undivided one-third interest in the trust was assigned to each account. Did the amendments create three separate and independent trusts, to which proportionate amounts of the income from the property are separately taxable, or did the original single trust continue as such, to which all the income from the property is taxable?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 15–16.

STATEMENT

The taxpayer is the trustee of the trust created by John P. Wilson by deed dated March 12, 1913, whereby certain stocks were transferred in trust for the benefit of the grantor's three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson. It was provided that the net income should be paid over and distributed, one-third to each of the three children so long as they should live and upon the death of any one of the principal bene-

ficiaries his one-third of the net income should be paid over and distributed in accordance with any directions in his will and in default of such directions, then to the surviving issue of the deceased beneficiary, and in default of such issue, to the surviving original beneficiaries. The trust was terminable at any time in whole or in part by the three children of the grantor, subject to the approval of the grantor if living, and terminates in any event upon the death of the survivor of the three children. Upon termination of the trust the principal or corpus of the estate is distributable in equal shares, one-third each to the three children if living, the share of any deceased child to be distributed as directed by his will. It was further provided that the trust instrument might be altered, changed, or modified in any manner and to any extent by the three children by an instrument in writing filed with the trustee, subject to the approval of the grantor, if living. It was stipulated that the instrument should be construed according to the laws of the State of Illinois (R. 65–77).

In accordance with the trust instrument, the three beneficiaries with the approval of the grantor executed three amendments to the trust. The first, dated September 21, 1918, required the division of the trust estate into three separate and equal parts or shares, each designated by the respective names of the three children and the assignment of undivided interests in the estate to each share was au-

thorized. One-half of the net income from each share after December 31, 1918, was to be added to the principal of such share, subject, however, to the right of any beneficiary to receive in any year upon his written request, approved by the grantor, the whole or any part of the one-half of the net income from his share of the trust estate directed to be accumulated. In all other respects the original deed of trust was continued in full force and effect (R. 79–81).

The second amendment, dated June 19, 1919, provided that one-half of the net income of each of the three trust estates (i. e., of each share of the trust estate) should be paid over and distributed as received to the beneficiaries entitled thereto and the remaining one-half of such net income should be paid over in whole or in part to the beneficiaries entitled thereto when requested in writing by two of the original beneficiaries, any of the net income not paid over or distributed to be added to the principal of the trust fund from which derived. The original trust deed as theretofore amended, except as modified, was continued in full force and effect (R. 82–85).

The third amendment, dated December 1, 1920, provided that the trustee should pay out each year so much of the net income from each of the separate trusts to the beneficiaries entitled thereto as should be requested in writing by the majority of the beneficiaries, subject, however, to the require-

ment that equal payments be made out of the net income from each of the said separate trusts so that each trust should be maintained on a basis of equality in amount so far as practicable (R. 86–89).

The grantor of the trust died October 3, 1922, and Martha Wilson, one of the original beneficiaries, died on December 25, 1923 (R. 132).

The deed of trust was again amended on April 25, 1928, by the two surviving original beneficiaries to authorize the trustee to borrow such sum or sums of money as should be authorized and directed in writing by John P. Wilson, Jr., son of the grantor and one of the original beneficiaries (R. 133–136).

Prior to the amendment of September 21, 1918, the trustee kept its accounts as a single trust for the three beneficiaries; after that date the capital account was divided into three equal parts and one assigned to each individual beneficiary for whom a separate account was kept from that date (R. 144–146). The trust property at all times consisted of corporate stocks and cash (R. 138). There was not at any time an actual division of the trust assets or property among the beneficiaries, but separate accounts were maintained and a one-third interest in each item of property, regardless of when acquired, was assigned to the account of each beneficiary. No particular certificates of stock and no segregated amount of cash were distributed to the respective accounts of the three original beneficia-

ries. There was set up in the account of each beneficiary his undivided one-third interest in each item of trust property. Income received from the trust property was divided and carried in equal amounts to the beneficiaries' accounts. The shares of stock held in the several corporations were carried in several certificates, not in equal one-thirds but in round amounts. The certificates were held in the name of the taxpayer as trustee under the original deed of trust or in the name of a nominee of the trustee. After the amendments to the original deed of trust the certificates of stock were not surrendered to the various corporations and new certificates issued. Other than the establishment of three separate accounts on the books, in which the interests of the original beneficiaries were set up after the amendment of September 1918, the trustee treated the estate or property as held in one trust. The trustee at all times kept only one bank account into which all receipts of cash went and from which all disbursements of cash were made (R. 146–149, 156–163).

The amendments to the deed of trust were made for the purpose of reducing taxes on undistributed income from trust property to be accumulated by having the same taxed as income of three separate trusts or entities rather than as income of one trust or entity (R. 136).

For the years 1924 to 1929, inclusive, the trustee filed separate fiduciary and income tax returns for

each beneficiary on the theory of there being three separate trust estates. The gross income, deductions and tax liability of each beneficiary for each year as shown on the returns were the same in amount. The Commissioner, upon audit of the returns, determined that there was but one trust estate held for three beneficiaries, and that the income from all of the property was taxable as a unit to the one trust (R. 27, 45, 65, 164–266).

Pursuant to the applicable statutes (Revenue Acts of 1924 and 1926, Section 219 (a), (b) (2) (3); Revenue Act of 1928, Sections 161 (a), 162 (b), (c), the Commissioner included in the taxable income of the single trust for each year all income from the trust property which was not distributed and was not distributable currently to the beneficiaries, deductions being allowed the trust for income paid or actually distributed to the beneficiaries (R. 27, 28, 45, 47). The only issue submitted is whether that part of the income from the trust property "which was not distributed or distributable to the beneficiaries is subject to income tax on the basis of a single trust or three trusts" (R. 95–96, 122–123). The tax upon the total income from the trust property on the basis of a single trust exceeds the aggregate taxes on the basis of three separate trusts.

The Board of Tax Appeals held that the amendments to the original deed of trust created three trust estates and that the income should be taxed

on the basis of three separate trusts. The Circuit Court of Appeals reversed, holding that the amendments were ineffective to divide the original single trust estate into three separate trusts and that the income should be taxed on the basis of one trust.

ARGUMENT

The Circuit Court of Appeals held that the trust property was held and administered, after the amendments as well as before, as a single estate and that the amendments to the original trust deed, which deed admittedly created only one trust for the equal benefit of the three children, did not divide the single estate into three separate trusts but resulted only in the establishment by the trustee of three accounts, one for each beneficiary. The decision below, we submit, is entirely sound.

Whether the amendments to the deed of trust were effective to create, out of the one trust estate admittedly set up by the original deed, three separate and independent trusts and entities requires a construction of the instruments amending the original deed. The intent of the parties to a written instrument, in aid of its construction, is to be ascertained not alone from particular words used but from the instrument or instruments as a whole and together, read in the light of all surrounding circumstances. In determining the effect of these amendments, what was actually done, rather than the design and purpose of the parties, must control.

United States v. *Phellis*, 257 U. S. 156, 172. An unexecuted intention has no effect and is a nullity.

Admittedly there was created by the grantor only one trust estate, consisting of certain stocks and other securities, for the benefit primarily of his three children, each of whom possessed an equal one-third interest in the income and in the principal upon termination of the trust. It is plain, from the facts hereinabove recited, that the amendments to the trust deed did not create three separate and distinct trust estates, and resulted at the most in the opening of a separate account on the books of the trustee for each beneficiary, in which was recorded as a matter of bookkeeping convenience the undivided interest of the beneficiary in the aggregate estate. Notwithstanding the references in the amendments to the accounts as separate trust estates, and the testimony of the witness as to the purpose of the amendments, it is clear that separate and distinct identified estates were not created nor was the property administered as separate estates. The only changes made by the amendments in respect of the trust property and the administration thereof was to set up a separate book account for each beneficiary to which was assigned his undivided interest, whereas only one account had been maintained theretofore. In every substantial respect the trust property at all times was held and administered by the trustee as a single trust estate for the equal benefit of the three children, after as well as before the amendments.

In the light of these facts, it seems plain that the Circuit Court of Appeals correctly construed the amendments as effecting only the establishment of three accounts and not three separate and independent trust estates. It is essential to the creation of a trust that three conditions or circumstances concur; first, there must be sufficient words to raise it; second, there must be a definite subject; and third, there must be an ascertained object; and if any one element be lacking the attempted trust must fail. *Marble* v. *Marble,* 304 Ill. 229, 235; *Snyder* v. *Snyder,* 280 Ill. 467, 469–470; *Thomas* v. *Clay,* 187 N. C. 778, 783. Cf. *Leach* v. *Godwin,* 198 N. Y. 35.

The respondent does not contend, nor did the court below hold, that an undivided interest in specific property cannot be made the subject of a trust. The respondent maintains, and the court below held, merely; that reading the amendments each as a whole, and together, in the light of the acts of the parties, the single-trust estate created by the original deed was not subdivided by the amendments into three separate and distinct trusts. It will be noted that although the amendments directed the division of the trust estate into three equal parts, and the income was made distributable upon request of any two beneficiaries, the trustee was required to make equal distributions of income, if any, to all beneficiaries, whether or not the third beneficiary requested or desired his share. More-

over, there was no change in the capacity in which the trustee held the property; the property continued to be held by the trustee or in the name of his nominee as such under the original deed for the equal benefit of all beneficiaries and not in separate and distinct parts as trustee of an identified portion of the property for each beneficiary individually. The amendments specifically provided that the original deed should remain in full force and effect except as modified by the amendments. All that the amendments accomplished was to set up separate accounts for the beneficiaries, recording their undivided interests in property held under the original trust deed and additions thereto. Such property was held in aggregate as a single trust and there was not at any time a division thereof. The amendments cannot be effective as creating separate and distinct trusts for lack of definite subjects.

Apparently the principal, if not the sole, object of the amendments was to reduce or minimize the Federal tax upon the income derived from the aggregate trust property. A consideration of the language of the amendments and of the attendant circumstances surrounding the administration of the trust property would seem to indicate that the parties, in order to avoid any inequality of beneficial interest, carefully drew the amendments to prevent any actual division of the trust estate and trust property into three separate and distinct

trusts. It seems plain, in any event, that no such division was made and that at most the amendments resulted in the establishment of a separate account for each beneficiary, nothing more than a matter of bookkeeping.

All the trust property was held as a unit by the trustee, after the amendments as well as before, all cash being carried in one fund and all stocks being held in the name of the trustee, or a nominee, as such under the original deed and not in proportionate amounts as trustee for the several beneficiaries independently. Distributions of income were subject to the control and directions of the beneficiaries acting jointly, either all together or one with the approval of the grantor or any two together, and changes in the trust property could be made only upon the written directions of two of the beneficiaries (R. 67–68, 69, 71, 80, 82–83, 88, 136–137, 145–146, 156–158). All distributions of income had to be in equal amounts to all beneficiaries and all accounts were maintained equal (R. 88, 145, 163.)

The decision below is in accord with the decisions of other Circuit Courts of Appeals and the Court of Claims, and the Board of Tax Appeals. *State Sav. Loan & Trust Co.* v. *Commissioner*, 63 F. (2d) 482 (C. C. A. 7th); *Johnson* v. *United States*, 65 C. Cls. 285; *Rauers* v. *Commissioner*, 28 B. T. A. 516; *Sparrow* v. *Commissioner*, 18 B. T. A. 1; *Campbell* v. *Commissioner*, 15 B. T. A. 414.

The decision below is not in conflict as to principles of law with the decisions of any other Circuit

Court of Appeals. It is argued by petitioners that there is a conflict with *Commissioner* v. *McIlvaine & Wilson* (C. C. A. 7th), decided July 19, 1935, not yet reported, but found in 353A C. C. H. p. 10274, which construed certain amendments, similar to those here involved, to another deed of trust, by the same grantor and for the same beneficiaries as here involved, as creating three separate and independent trust estates.

In the *McIlvaine & Wilson case*, as here, there was created by the original deed of trust a single trust estate for the equal benefit of the grantor's three children and the beneficiaries were authorized to amend, alter, modify or change the deed in any way, subject only to the approval of the grantor, if living. Three amendments were made, as authorized, which in all material respects were substantially like, and to the same effect as, the amendments made in the instant case. The Seventh Circuit Court of Appeals, however, took the view that the intent of the parties to create three separate and distinct trusts was plain and that the amendments effectively executed that intent.

While the *McIlvaine & Wilson case* presented the same question and rested upon substantially the same facts as the instant case, and the two Circuit Courts of Appeals reached opposite conclusions, both cases involve merely the construction of certain written instruments, amendments to the original deeds of trust. Neither case involves any unsettled principle of law of general importance.

CONCLUSION

The decision of the Circuit Court of Appeals is correct. There is no conflict of decisions, except as already noted. The case rests upon its own particular facts and involves no important general principle of law. The petition for certiorari should be denied.

Respectfully submitted.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
JAMES W. MORRIS,
JOHN MACC. HUDSON,
Special Assistants to the Attorney General.

AUGUST 1935.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:

SEC. 143. FIDUCIARY RETURNS.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

* * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *.

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

* * * * *

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor). For return made by beneficiary, see section 143.

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

The material provisions of the Revenue Acts of 1924, c. 234, 43 Stat. 253, and 1926, c. 27, 44 Stat. 9, are found in Sections 219 and 225 (U. S. C., Title 26, Secs. 960 and 966; and U. S. C. App., Title 26, Secs. 960 and 966), and are identical with the quoted provisions of the Revenue Act of 1928.

U. S. GOVERNMENT PRINTING OFFICE: 1938

Office Supreme Court, U.
FILED
DEC 3 1935
CHARLES ELMORE CROPLEY

FILE COPY

No. 169

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Summary of Argument	8
Argument	10
Conclusion	22
Appendix	23

CITATIONS

Cases:	
Burnet v. *Guggenheim*, 288 U. S. 280	18
Burnet v. *Wells*, 289 U. S. 670	18
Calderon v. *Atlas Steamship Co.*, 170 U. S. 272	11
Campbell v. *Commissioner*, 15 B. T. A. 414	20
Commissioner v. *McIlvaine*, 78 F. (2d) 787, certiorari granted, November 11, 1935, No. 566	21
Corliss v. *Bowers*, 281 U. S. 376	18
Johnson v. *United States*, 65 C. Cls. 285, certiorari denied, 278 U. S. 611	20
Langford Inv. Co. v. *Commissioner*, 77 F. (2d) 468	20, 21
Lynchburg Trust & S. Bank v. *Commissioner*, 68 F. (2d) 356, certiorari denied, 292 U. S. 640	20, 21
New York Cent. R. R. Co. v. *Mohney*, 252 U. S. 152	11
Rauers v. *Commissioner*, 28 B. T. A. 516	20, 21
Sparrow v. *Commissioner*, 18 B. T. A. 1	20, 21
State Sav. Loan & Trust Co. v. *Commissioner*, 63 F. (2d) 482	20
Tyler v. *United States*, 281 U. S. 497	18
United States v. *Phellis*, 257 U. S. 156	11
Willcuts v. *Ordway*, 19 F. (2d) 917	21
Wynne v. *Commissioner*, 77 F. (2d) 473	20
Statutes:	
Revenue Act of 1924, c. 234, 43 Stat, 253:	
Sec. 219	24
Sec. 225	24
Revenue Act of 1926, c. 27, 44 Stat. 9:	
Sec. 219	24
Sec. 225	24
Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:	
Sec. 143	23
Sec. 161	23
Sec. 162	24

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 169

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee Under Deed of Trust of John P. Wilson, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 59–65) is not reported. The opinion of the Circuit Court of Appeals (R. 187–193) is reported in 75 F. (2d) 973.

JURISDICTION

The judgment of the Circuit Court of Appeals, reversing the Board of Tax Appeals, was entered

March 11, 1935. (R. 193.) The petition for rehearing was filed March 27, 1935, and was denied on March 27, 1935. (R. 194–195.) The petition for certiorari was filed June 25, 1935, and was granted October 14, 1935. (R. 197.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A deed creating a single trust for the equal benefit of three beneficiaries was amended to divide the trust estate into three equal parts or shares. A separate account was set up for each beneficiary and an undivided one-third interest in the aggregate trust estate was assigned to each account. Did the amendments create three separate and independent trusts, to which proportionate amounts of the income from the property are separately taxable, or did the original single trust continue as such, to which all the income from the property is taxable?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 23–24.

STATEMENT

The petitioner is the trustee of the trust created by John P. Wilson by deed dated March 12, 1913, whereby certain stocks were transferred in trust for the benefit of the grantor's three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dick-

inson. It was provided that the net income should be paid over and distributed, one-third to each of the three children so long as they should live and upon the death of any one of the principal beneficiaries his one-third of the net income should be paid over and distributed in accordance with any directions in his will and in default of such directions, then to the surviving issue of the deceased beneficiary, and in default of such issue, to the surviving original beneficiaries. During the first fifteen years of the trust, however, the net income could be accumulated by the trustee with the written consent of the primary beneficiaries and added to the principal of the trust fund. The trust was terminable at any time in whole or in part by the three children of the grantor, subject to the approval of the grantor if living, and terminates in any event upon the death of the survivor of the three children. Upon termination of the trust the principal or corpus of the estate is distributable in equal shares, one-third each to the three children if living, the share of any deceased child to be distributed by his will and in default of directions, to his surviving issue *per stirpes,* and in default of his issue, to the surviving issue of the grantor *per stirpes.* It was further provided that the trust instrument might be altered, changed or modified in any manner and to any extent by the three children by an instrument in writing filed with the trustee, subject to the approval of the grantor, if living. It was stipulated that the instrument should be con-

strued according to the laws of the State of Illinois. (R. 40–48.)

In accordance with the trust instrument, the three beneficiaries with the approval of the grantor executed three amendments to the trust. The first, dated September 21, 1918, provided for the division of the trust estate into three separate and equal parts or shares, each designated by the respective names of the three children. It also provided for accumulation of one-half of the net income from each share after December 31, 1918, to be added to the principal of such share, subject, however, to the right of any beneficiary to receive upon his written request, approved by the grantor, the whole or any part of the one-half of the net income from his share of the trust estate directed to be accumulated. In all other respects the original deed of trust was continued in full force and effect. (R. 49–51.)

The second amendment, dated June 19, 1919, provided that one-half of the net income of each of the three trust estates should be paid over and distributed as received to the beneficiaries entitled thereto, and the remaining one-half of such net income should be paid over in whole or in part to the beneficiaries entitled thereto when requested in writing by two of the original beneficiaries. Any of the net income not paid over or distributed was to be added to the principal of the trust fund from which de-

rived. In the event of the death of any of the original beneficiaries, the net income from the trust estate to which such deceased beneficiary would have been entitled was payable to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary and to charities in accordance with directions in his last will and in default of any such directions, then to the surviving issue of the deceased beneficiary *per stirpes,* and in default of such issue, to the surviving issue of the grantor *per stirpes.* It was then provided that upon termination of the trust the several trust estates should be paid over to the beneficiaries respectively entitled thereto, the share or estate of any deceased beneficiary to be paid over to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary and to charities, as directed by the beneficiary in his last will, and in default of such directions, to the surviving issue of such beneficiary, and in default of such issue, to the surviving issue of the grantor. The original trust deed as theretofore amended, except as modified, was continued in full force and effect. (R. 51–53.)

The third amendment, dated December 1, 1920, provided that the trustee should pay out each year so much of the net income from each of the separate trusts to the beneficiaries entitled thereto as should be requested in writing by the majority of the beneficiaries, subject, however, to the requirement that

equal payments be made out of the net income from each of the said separate trusts so that each trust should be maintained on a basis of equality in amount so far as practicable. Any part of the net income received in any year from each separate trust estate which should not be paid out in accordance with the foregoing provision was to be added to and form a part of the principal of the trust estate from which derived. (R. 54–55.)

The deed of trust was again amended on April 25, 1928, by the surviving original beneficiaries to authorize the trustee to borrow such sum or sums of money as should be authorized and directed in writing by John P. Wilson, Jr., son of the grantor and one of the original beneficiaries. (R. 82–83.)

Prior to the amendment of September 21, 1918, the trustee kept its accounts as a single trust for the three beneficiaries and after that date the capital account was divided into three equal parts and one assigned to each individual beneficiary for whom a separate account was kept from that date. (R. 89–90.) The trust property consisted of corporate stocks, government bonds, and cash. (R. 85.) There was not at any time an actual division of the trust assets or property among the beneficiaries, but separate accounts were maintained and a one-third interest in each item of property, regardless of when acquired, was assigned to the account of each beneficiary. No particular certificates of stock and no segregated amount of cash were distributed to the respective accounts of the three

original beneficiaries. Each beneficiary was assigned this one-third interest in each item of trust property. Income received from the trust property was divided and carried in equal amounts to the beneficiaries' accounts. The shares of stock held in the several corporations were carried in several certificates, not in equal one-thirds but in round amounts. The certificates were held in the name of the taxpayer as trustee under the original deed of trust or in the name of a nominee of the trustee. After the amendments to the original deed of trust the certificates of stock were not surrendered to the various corporations and new certificates issued. Other than the establishment of three separate accounts on the books, to which the interests of the original beneficiaries were assigned after the amendment of September, 1918, the petitioner treated the estate or property as held in one trust. The petitioner at all times kept only one bank account into which all receipts of cash went and from which all disbursements of cash were made. (R. 90–92, 97–102.)

The amendments to the deed of trust were made for the purpose of identifying the interests of the respective beneficiaries in the event of the death of any beneficiary and also for the purpose of reducing taxes on undistributed income from trust property to be accumulated by having the same taxed as income of three separate trusts or entities rather than as income of one trust or entity. (R. 83.)

The grantor of the trust died October 3, 1922, and Martha Wilson, one of the original beneficiaries, died on December 25, 1923. (R. 81.)

For the years 1924 to 1929, inclusive, the petitioner filed separate fiduciary and income tax returns for each beneficiary on the theory of there being three separate trust estates. The gross income, deductions and tax liability of each beneficiary for each year as shown on the returns were the same in amount. The Commissioner, upon audit of the returns, determined that there was but one trust estate held for three beneficiaries and the income from all of the property was taxable as a unit to the one trust. (R. 17, 28–29, 40, 102–143.)

The Board of Tax Appeals held that the amendments to the original deed of trust created three trust estates and that the income should be taxed on the basis of three separate trusts. The Circuit Court of Appeals reversed, holding that the amendments were ineffective to divide the original single trust estate into three separate trusts and that the income should be taxed on the basis of one trust.

SUMMARY OF ARGUMENT

The only question is whether the income from the property held under the amended trust deed is to be taxed as arising under one trust or under three separate trusts. Of the three amendments, only the first contains any provision which can be argued to have divided the original single trust into three sep-

arate estates. This amendment must be construed as written, irrespective of the mental purpose of the parties.

In speaking of "equal parts or shares" of the entire estate, and in providing that each "severally be designated by our respective names", the first amendment seems to have contemplated a changed accounting practice, rather than the creation of independent trust estates. Such has been the construction placed upon it by the parties, in that the trustee, without objection from the beneficiaries, has consistently administered the trust estate as though it were a single fund and has made no change in its practice except to set up three accounts to each of which an undivided one-third interest in property and income has been assigned.

Although the second and third amendments speak of "separate trust estates," they contain nothing purporting to separate the trust fund and are merely evidence of what was deemed to have been accomplished by the first amendment. The evidence afforded by these words is considerably offset by provisions for distribution of income equally to each beneficiary, and only on the request of a majority of the beneficiaries. This enforced equality of interest seems more characteristic of a single trust than of three independent trusts.

Although none of the factors presented is conclusive, the Government submits that those supporting its position outweigh those pointing to the contrary conclusion. Since the practical economic

interest of the three beneficiaries was changed in no respect by the amendments, it is believed that the method and rate of taxation, which is a practical matter, should not be affected unless there were provisions far clearer than those at bar. Otherwise, by diligent subdivision, it would be possible so to divide a single trust, administered by a single trustee, as entirely to escape taxation of the trustee.

The decisions in the lower Federal courts have turned largely upon the terms of the particular trust instrument under consideration, but the factors which have influenced their judgments include several which are relied on by the Government in this case.

ARGUMENT

The issue before this Court is the proper method of taxing the income of the trust estate for the taxable years involved. If the income from the trust estate is taxable without division, it is subject to a higher rate of taxation than if the income were divided into three parts and each part taxed separately. The petitioner contends that it was the intention, expressed in the amendments to the original deed of trust, to create three separate trusts, and that one-third of the corpus of the estate vested in each of the primary beneficiaries upon execution of the amendment of September 21, 1918. The only question is whether this amendment was effective to convert a single trust estate into three separate trusts.

Whether the beneficiaries were equal beneficiaries of a single trust or whether each was the sole beneficiary of a separate trust must be determined from the trust instrument itself. Thus, although there is parol evidence in this case that the beneficiaries wished to create three separate trusts in order to identify their individual interests and to minimize taxation (R. 83), what was actually done rather than what was hoped to be accomplished must control. *United States* v. *Phellis,* 257 U. S. 156, 172; *Calderon* v. *Atlas Steamship Co.,* 170 U. S. 272, 280. As was said in *New York Cent. R. R. Co.* v. *Mohney,* 252 U. S. 152, 157:

> The mental purpose of one of the parties to a written contract cannot change its terms. *Southern Pacific Co.* v. *Arizona,* 259 U. S. 472.

Prior to the amendment of September 21, 1918, the beneficiaries were equal beneficiaries under a single trust estate. That amendment provided (R. 49–50):

> First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture

over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. The whole of the net income received from each share during the remainder of the year 1918, and one half of such net income received after December 31st, 1918, and during the life of said John P. Wilson, the creator of said trust, shall be accumulated and added to the principal of such share; Provided, however, that each of the undersigned, upon his or her written request, approved in each case by said John P. Wilson, and delivered to the said Trustee, shall be entitled to receive the whole or any part of the one half of the said net income of his or her share of said trust estate so directed to be accumulated in any year, but any such written request shall relate only to the income accruing during the year in which such request is delivered to the Trustee having possession of the trust estate.

It seems clear that this amendment did not contemplate the termination of the prior trust estate, to be followed by the creation of three independent trusts. It speaks of "equal parts or shares," which necessarily implies that they are parts or shares of a larger whole. True, the first clause of the first article may be explained on the ground that it necessarily referred to a part of the single trust estate existing before its division. But the second clause reads "which parts or shares shall severally be designated by our respective names."

Had the article in fact accomplished a division of the trust into three separate trust estates, it would seem that the article would speak of "which trust estates," rather than "which parts or shares." Similarly, if there had been a complete division of the trust estate, with its concomitant termination, there would have been no necessity for the provision that the parts or shares "be designated by our respective names." A more usual phrasing would have been to declare that the three estates were each to be held in trust for one of the beneficiaries. To provide that "a part or share" be "designated by our respective names" seems clearly to be an accounting provision rather than a formal conveyance of property to form a new trust estate.

This view is supported by the parenthetical clause "to which may be assigned undivided interests in the whole or any part of the said trust estate." This language is permissive and is quite evidently intended to authorize the trustee to set up a separate account for each beneficiary, and either (1) assign to each account an undivided interest in the whole, or (2) assign to each account an undivided interest in an identified portion. Thus the instrument itself accomplishes no division of the trust corpus but merely authorizes the trustee to separate his accounts. If the instrument had created three separate trusts, there would be no reason for allowing such discretion to the trustee.

After the first amendment the petitioner set up and has since maintained separate and distinct accounts on its books for the three beneficiaries. But it simply assigned to each beneficiary an undivided one-third interest in the aggregate trust estate. There has been no physical segregation of the property held in trust. None of the stock or security certificates has been assigned to the account of a specified beneficiary. No income from a particular asset has been carried into any one of the separate accounts. On the contrary, a one-third interest in the income derived from each asset was set up in the separate accounts. The income was received and held by petitioner as one fund. All of the certificates of stock belonging to the trust estate were held in the name of the petitioner, as trustee under the original deed, or in the name of a nominee, and none was held by the petitioner as trustee of the beneficiaries individually. Reinvestments were not made separately for the accounts of the respective beneficiaries, but were made by petitioner for the equal benefit of each of the accounts. Only one bank account was maintained by the petitioner, from which all disbursements on account of trust property were made and into which all trust receipts of cash went. (R. 88–92, 97–98, 99–100, 147 et seq.)

It is not denied that the second and third amendments to the trust indenture speak of "the several trust estates" and the "said separate trusts" (R. 51–55). This characterization of the effect of the

first amendment is a factor to be considered in determining its construction. We submit, however, that the quoted language mistakenly treats as already accomplished what the beneficiaries perhaps intended to do, but fell short of consummating. Neither of these amendments contained any provision which was directed toward the establishment of separate trusts, and neither can serve to terminate the first trust and to create new ones if the first amendment did not do so.

The second and third amendments also contained provisions pointing to the conclusion that the single trust was continued. The second amendment provided (R. 51–52) that:

> One-half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one-half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries * * *.

This was modified by the third amendment (R. 54–55) to provide:

> The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time

> to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts.

The effect of these provisions was that a beneficiary would receive income only to the extent that he gained the assent of another beneficiary, and that he would receive the income set by a majority of the beneficiaries whether he desired it or not. The status of the beneficiaries is thus much more similar to equal beneficiaries under a single trust than to that of a sole beneficiary of an independent trust.

Similarly, the third amendment provided (R. 55):

> But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

The insistence upon equality of payment and equality of interest in the corpus is hardly consistent with a view that the three beneficiaries were each the beneficial owner of a trust estate separate and distinct from that of the others.

Whether the property held by petitioner constitutes a single or three separate trust estates must be determined from all of the available criteria to be found in the instruments and the practice of the parties under them. To indicate that three

trusts were established, there can be shown only that: (1) the first amendment directs that the original trust estate be divided into "three equal parts or shares;" and (2) the second and third amendments speak of "trust estates" or the "separate trust estates." To support the Government's position there are the considerations that: (1) the separate trusts or accounts relate only to undivided interests which comprised the whole of what admittedly was a single trust; (2) they were created by a single instrument; (3) they were to be administered by a single trustee; (4) the first amendment used language more consonant with establishing separate accounts within the original trust estate than with its termination and the creation of new trusts; (5) the trustee and the beneficiaries so construed the amendment, in that the petitioner continued to act as though it were a single trustee for a single estate; (6) the beneficiaries exercised mutual control over the income distributions from each account; and (7) they provided that the distribution of income from and interests in the corpus should always be equal.

It is believed that none of these considerations, whether supporting the position of the petitioner or of the Government, is conclusive of the question. It is submitted that the factors pointing to the conclusion reached by the court below greatly outweigh, in number and in cogency, those pointing to the contrary result. Thus, while no one of the factors was incompatible with the existence of

three separate trusts, the presence of so many *indicia* of a single trust compels the conclusion that the amendments did not serve to terminate the original single trust and to create three separate and distinct trusts in its place.

This conclusion finds weighty support in a practical examination of the economic benefits which are the occasion of the tax. See *Corliss* v. *Bowers*, 281 U. S. 376, 378; *Tyler* v. *United States*, 281 U. S. 497, 503; *Burnet* v. *Guggenheim*, 288 U. S. 280, 283–4; *Burnet* v. *Wells*, 289 U. S. 670, 678. The beneficiaries each had an interest which, from an economic viewpoint, was precisely the same after as before the amendment of the original indenture. One-third of the corpus, after as before, was beneficially owned by each. One-third of the distributed income was paid to each. The property which constituted the trust estate remained the same. It was administered by the same trustee, and all of the advantages of a unified trusteeship were retained. After the amendments, as before, the indenture insured that each beneficiary should receive income and have an interest in the corpus equal to that of the others. The contingent interest of each beneficiary in the portion of the corpus held for the others was the same after the amendment as before. It would seem that provisions far clearer than those at bar would be necessary to vary the method and amount of taxation when the change in the economic interest has been so slight as to be imperceptible.

If subdivision of this single trust into three parts requires the Government to deal with three separate taxpayers, there is nothing to prevent a further subdivision of the trust. In fact, subdivision can be carried so far that a situation will finally result where the income of each subdivision will be so small that there will be no tax whatever. A trust with a net income of less than $1,500 and a gross income of less than $5,000 is not required to file a return or pay any tax. The logic of the taxpayer's contention would require the taxing authorities, if the subdivision were carried far enough, to permit the single trustee to receive the income, from what in every practical sense is a single corpus, free of all taxation.

In this connection, it should be noted that the same grantor has created another trust for the same beneficiaries and that a similar attempt has been made there to subdivide the trust by amendment into three separate trusts. The tax situation resulting from the other trusts is now before this Court in No. 566. Accordingly, if the taxpayer's contentions are sustained, six separate trusts will be recognized and a good start will have been made toward a subdivision which will eliminate all taxation upon undistributed income. Unless a barren literalism is to be the guide, we submit that the single trust corpus here involved should be treated as an entity and the attempt to create three separate trusts consisting of undivided interests in a

single corpus should not be permitted to obscure the reality that the income here sought to be taxed was produced by a single corpus.

The Government does not conceive that the decisions of the lower Federal courts are especially helpful in the determination of this case. Each turns so narrowly on the terms of the particular trust instrument under consideration that it has but slight relation to the other cases. Some have held that the income was to be taxed as though it were produced by a single trust estate. *State Savings Loan & Trust Co.* v. *Commissioner,* 63 F. (2d) 482 (C. C. A. 7th); *Johnson* v. *United States,* 65 C. Cls. 285, certiorari denied, 278 U. S. 611; *Langford Inv. Co.* v. *Commissioner,* 77 F. (2d) 468 (C. C. A. 5th); *Wynne* v. *Commissioner,* 77 F. (2d) 473 (C. C. A. 5th); *Rauers* v. *Commissioner,* 28 B. T. A. 516; *Sparrow* v. *Commissioner,* 18 B. T. A. 1; *Campbell* v. *Commissioner,* 15 B. T. A. 414. One case relied upon by petitioner has held that the income was to be taxed as though produced by separate trust estates. *Lynchburg Trust & S. Bank* v. *Commissioner,* 68 F. (2d) 356 (C. C. A. 4th), certiorari denied, 292 U. S. 640.

The factors which seem to have influenced these courts are numerous. They include: the practical interpretation given the instrument by the trustees (*Campbell* v. *Commissioner, supra; Sparrow* v. *Commissioner, supra; Rauers* v. *Commissioner, supra*); the language of the instrument, in speaking of a trust fund or of trust funds (*Johnson* v.

United States, supra; State Savings Loan & Trust Co. v. *Commissioner, supra; Langford Inv. Co.* v. *Commissioner, supra*); that the beneficiaries' interests in a practical sense were equivalent to those of beneficiaries of a single trust (*Langford Inv. Co.* v. *Commissioner, supra*); that the trustee held for each beneficiary an undivided interest rather than segregated property (*Langford Inv. Co.* v. *Commissioner, supra*); that there was no possibility of different trustees holding the purportedly different estates (*Rauers* v. *Commissioner, supra*); that provision was made for investment in improving the property of the beneficiaries (*Lynchburg Trust and S. Bank* v. *Commissioner, supra*); the testator's plain desire to keep the residuary estate intact (*Sparrow* v. *Commissioner, supra*); the accounting difficulties were the trust estate treated as single (*Lynchburg Trust and S. Bank* v. *Commissioner, supra*).

Willcuts v. *Ordway*, 19 F. (2d) 917 (C. C. A. 8th), relied upon by petitioner, is not apposite. It merely held that the annual income of the trust estate had been separated from the trust estate and distributed, as provided by the trust instrument, to or for the respective beneficiaries, so that there remained no income taxable to the principal trust estate under the statute.

It is conceded that *Commissioner* v. *McIlvaine*, 78 F. (2d) 787 (C. C. A. 7th), pending on certiorari as No. 566, is opposed to the result reached by the court below. That case involved substantially

similar trusts created by the same grantor for the same beneficiaries as are involved in this case. The Circuit Court of Appeals for the Seventh Circuit reached a conclusion contrary to that of the court below. For the reasons set forth above, it is submitted that the decision is erroneous.

CONCLUSION

We submit that the original trust deed, as amended, created only one trust estate, and that the income derived from the trust property during the taxable years is to be taxed to the single trust. The decision of the court below is correct and its judgment should be affirmed.

Respectfully submitted.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
BERRYMAN GREEN,
Special Assistants to the Attorney General.
WARNER W. GARDNER,
Attorney.

DECEMBER 1935.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:

SEC. 143. FIDUCIARY RETURNS.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

* * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *.

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an in-

fant which is to be held or distributed as the court may direct;

* * * * *

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor). For return made by beneficiary see section 143.

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

The material provisions of the Revenue Acts of 1924, c. 234, 43 Stat. 253, and 1926, c. 27, 44 Stat. 9, are found in Sections 219 and 225, and are identical with the quoted provisions of the Revenue Act of 1928.

U. S. GOVERNMENT PRINTING OFFICE: 1931

SUPREME COURT OF THE UNITED STATES.

No. 169.—October Term, 1935.

United States Trust Company of New York, Trustee under deed of trust of John P. Wilson, Petitioner,
vs.
Commissioner of Internal Revenue.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 6, 1936.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioner is trustee under a trust created by John P. Wilson, in 1913, for the benefit of his three children. Under a reserved power, the trust was four times amended. The sole question is whether the amendments created three separate trusts. The question arises in relation to the taxation of income. If there is but a single trust, as the Commissioner of Internal Revenue ruled, an additional tax would be payable. If there are three trusts, as the Board of Tax Appeals determined, there would be no additional tax. The Circuit Court of Appeals held that there was only one trust. 75 F. (2d) 973. Certiorari was granted because of the conflicting decision of the Circuit Court of Appeals for the Seventh Circuit in *Helvering* v. *McIlvaine*, 78 F. (2d) 787. *Post*, p. —.

By the original deed, one-third of the net income of the securities held in trust was to be paid to each of the three children while living, and upon the death of any one, to those who were to succeed to his or her interest in accordance with the provisions of the deed. During the first fifteen years of the trust the income could be accumulated by the trustee, with the written consent of the primary beneficiaries, and added to the principal. The trust was terminable at any time in whole or in part by the three children (or survivors) subject to the approval of the grantor, if living, and in any event was to terminate on the death of all the children. Upon termination, one-third of the principal was to be distributed to each of the three children if living, and the share of a deceased child was to go according to the provisions of his or her will or, in the absence of such disposition, to the surviving issue of the de-

cedent or, in default of such issue, to the surviving issue of the grantor *per stirpes*. Provision was made for the alteration of the trust "in any respect and to any extent at any time" by the three children, or survivors, subject to the approval of the grantor if living. Thereafter the "rights and powers of all parties concerned" were to be the same as though the trust deed had originally been executed in the altered form.

In 1918, the three children, with the approval of the grantor, modified the trust so as to provide:

"The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture over one-third of said trust estate and the income thereof, except as may be otherwise specifically provided herein".

It was further provided that the whole of the net income received from each share during the remainder of 1918, and one-half of the net income received thereafter and during the life of the grantor, should be accumulated and added to the principal of such share, with privilege of withdrawal by the beneficiary, with the grantor's consent, of the amount so accumulated. All the provisions of the original trust deed, except as they were "expressly or necessarily" modified by the new instrument, were to continue in force.

In 1919, the three children, with the grantor's approval, executed another modifying instrument which provided that one-half of the net income "of each of the three trust estates" should be paid over, as received, to the beneficiaries entitled thereto, and that the other one-half should be paid to them when the payment was requested by any two of the original beneficiaries; the net income not so paid over was to "be added to the principal of the trust fund from which it is derived". Provision was also made for the disposition of the net income in case of the death of any of the original beneficiaries and for the distribution of the "several trust estates" upon termination.

In 1920, the three children, with the approval of the grantor, modified the amendment of 1919 with respect to the disposition

of income by providing that the trustee should pay out "as much of the net income from each of said separate trusts" to the beneficiaries as should be requested by a majority in interest of the beneficiaries, with the added requirement that "equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintaind on a basis of equality in amount so far as practicable". There was a further provision that so much of the net income, "received in any year from each separate trust estate", which was not paid out should form part "of the principal of the separate trust estate" from which it was derived, and the trustee was required to devote to charitable purposes so much of the net income "of said trusts" as should be requested by the three children (or survivors), such payments to be made "in equal amounts from each of said separate trusts".

There was a further amendment in 1928 enlarging the powers conferred upon the trustee by the original deed with respect to the borrowing of money, the borrowed sums to be dealt with "as part of the principal of the three trusts hereunder, in equal shares".

The purpose of the first amendment and the subsequent course of dealings are thus described in the findings of the Board of Tax Appeals, which are adequately supported by the evidence:

"The purpose of the amendment of September 21, 1918, was to create three separate and distinct trusts, one for each of the beneficiaries of the single trust then in existence, in order to reduce liability for income taxes on the income of the trust.

"Prior to the first amendment the trustee kept one cash account for the trust under the heading 'Trust under deed of John P. Wilson, for John P. Wilson, Jr., and others' to which was credited all income of the trust. On September 27, 1918, three accounts were opened up by the trustee, one in the name of 'Trust under Deed of John P. Wilson for John P. Wison, Jr.'; one under the name of 'Trust under Deed of John P. Wilson, for Anna W. Dickinson'; and the other under the name of 'Trust under Deed of John P. Wilson, for Martha Wilson'. The single account was then closed by transferring equal amounts of its balance to each of the new accounts. Thereafter cash received and disbursed on account of the trust property was entered in these accounts, one-third in each.

"At the same time the property account kept by the trustee for the stock of the single trust was closed out by transferring the

items thereof equally to accounts opened up under the names of the three beneficiaries. There was no actual division of the property held under the trust indenture. The new accounts as set up showed that one-third of each asset of the old trust represented the corpus of three new trusts, one for each of the three children of the grantor. Acquisitions of additional principal by purchase were divided equally among the three trusts.

"The stock certificates acquired by the trustee before and after September 21, 1918, were carried in the name of the petitioner as trustee under the deed of trust of John P. Wilson or in the name of a nominee of the trustee. The cash belonging to the trusts in question here and all other trusts being administered by the trustee was kept in one general account with another bank.

"During the taxable years the trustee rendered separate reports each month to the beneficiaries on the basis of a separate trust for each. For each of the years 1924 to 1929, inclusive, it filed fiduciary and income tax returns on the basis of a separate and distinct trust for each child. In his audit of the returns the respondent determined that the income held in trust under the indenture of March 12, 1913, as amended, was taxable on the basis of a single trust and a single return for each year".

The Board of Tax Appeals concluded that "three separate and distinct trusts" were created.

No question is raised as to the validity of the several amendments. The only question is as to their construction and effect. The parties, if they pleased, had power to convert the single trust into three trusts and the evidence and findings leave no doubt as to their intention to do so. The question is whether they accomplished their purpose. *United States* v. *Phellis*, 257 U. S. 156, 172. If the various securities had been divided physically, if new certificates of stock had been obtained for the several beneficiaries, and such certificates and specific bonds and cash had been set aside for each, there would be no room for argument that three separate trusts were not created. But it was not necessary to have such a physical division in order to carry out the clear intention of the parties. An undivided interest in property may constitute the corpus of a trust. The original trust deed provided that its provisions and limitations should be construed according to the laws of Illinois. But the elementary principle is applied in Illinois, as elsewhere, that "every kind of vested right which the law recognizes as valuable may be transferred in trust". *Burke* v. *Burke*, 259 Ill. 262, 268. "It [a trust] may be created in any property, real or personal, legal or equitable, which is in existence, and which

in the eye of a court of equity, is of value". *Gurnett* v. *Mutual Life Insurance Co.*, 356 Ill. 612, 617. Perry on Trusts, 7th ed., secs. 67, 68. Nor are the amending instruments open to the objection that the subject of the trusts was not adequately defined. Compare *Snyder* v. *Snyder*, 280 Ill. 467, 469, 470; *Marble* v. *Marble's Estate*, 304 Ill. 229, 236. Where there is an intention to create separate trusts, the fact that "the trusts" are "kept in one fund" does not necessarily defeat the intention and require the conclusion that there is but a single trust. *Matter of Colegrove*, 221 N. Y. 455, 459. "In many cases", said the Court of Appeals of New York in *Vanderpoel* v. *Lowe*, 112 N. Y. 167, 180, where "income and principal were given in equal shares, although out of one fund kept *in solido* for convenience of investment, a severance of the trust into its component parts has been adjudged. . . . The shares and interests are several, although the fund remains undivided". See, also, *Rollestone* v. *National Bank of Commerce*, 299 Mo. 57, 71.

In the instant case, immediately following the first amendment, the trustee opened separate accounts for the three trusts and the single account previously kept was closed. Income received and amounts disbursed were divided and entered in the separate accounts. The property account of the single trust was closed and the items were transferred equally to separate accounts in the names of the beneficiaries, showing one-third of the assets of the old trust as representing the corpus of each of the three trusts. New principal was divided equally in the same way. If, at the outset, there had been three trust deeds, each creating a trust for the benefit of a distinct beneficiary in an undivided one-third of the property involved, no question would have arisen. We think the same result was achieved by the use of the power of amendment. We find no ground for concluding that the purpose of the parties to create the three trusts was not carried out.

The decision of the Circuit Court of Appeals is reversed and the order of the Board of Tax Appeals is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.